

EXHIBIT I



May 5, 2023

NIKE V STOCKX

Expert Report

Nike V. StockX
CASE 1:22-CV-00983-VEC

Prepared By

Steven S. McNew, Senior Managing Director

Global Lead, Blockchain and Digital Assets
1301 McKinney, Suite 3500
Houston, TX 77002

Prepared For

DLA Piper LLP

Highly Confidential – Outside Counsel’s Eyes Only

Table of Contents

Background and Experience	1
Assignment	1
Factual Background	2
Background on Blockchain Technology and NFT Basics	2
History of NFT Marketplace and NFT Collectibles	4
Common Themes, Values, and Aspects of NFT Projects and the Marketplace.....	7
The StockX Vault NFT Offering.....	8
Analysis	25
StockX Represented to Customers that Vault NFTs Comprise a Bundle of Physical and Digital Goods and Services, Beyond Mere “Claim Tickets”	25
StockX’s Use of Blockchain is Pretextual and Falls Short of Both its Own Representations and Industry Standards	43
Deviation from Market Pricing of Corresponding Physical Goods	49
StockX’s Vault NFTs Were Shoddily Designed and Implemented	51
StockX’s Underlying Blockchain-Based NFTs Appeared Wholly Unnecessary and Indeed Pretextual to the Vaulting Product	61
Conclusion	62

Background and Experience

I, Steven S. McNew, am a Senior Managing Director and Global Practice Lead, Blockchain and Digital Assets at FTI Consulting Technology LLC (“FTI”). FTI provides blockchain advisory services, cryptocurrency investigations, digital forensic investigations, data governance, privacy and security, and electronic discovery services to assist organizations across a variety of industries to better govern, secure, find, and analyze information.

I have led hundreds of cryptocurrency and digital assets investigations and currently lead all cryptocurrency workstreams in some of the largest bankruptcies in the sector, including representation of the Unsecured Creditors Committee (UCC) in the FTX bankruptcy, representation of the Equity Committee in the Core Scientific bankruptcy, and I previously led all cryptocurrency workstreams in representation of the UCC in the Voyager bankruptcy. I routinely manage advisory and diligence engagements for businesses that are leveraging cryptocurrencies, NFTs, blockchains and other digit assets.

I completed blockchain and cryptocurrency coursework at the Massachusetts Institute of Technology (MIT). I have also completed studies and passed the required examinations with the Blockchain Council to earn designations of Certified Bitcoin Expert, Certified Blockchain Expert, and Certified Smart Contracts Developer. Additionally, I am certified by CipherTrace as a Cryptocurrency Investigator and a member of the Wall Street Blockchain Alliance, Texas Blockchain Council, Government Blockchain Association, and the Blockchain Council. I have thirty-four (34) years of experience performing various forensic and cybersecurity investigations, and other services mentioned above. I am a frequent speaker on blockchain, cryptocurrency, NFTs, metaverse, and cybersecurity. I have also published numerous articles on these topics. I’m quoted often as a blockchain and cryptocurrency expert by various publications. My Curriculum Vitae is attached hereto as Appendix B.

All of my opinions and conclusions presented in this Report are held to a reasonable degree of professional certainty. I have prepared my Report while employed by FTI Consulting. I have worked as a consultant and expert for 34 years.

I have been retained by DLA Piper as a testifying expert at the rate \$910 per hour. My fee is not contingent on the outcome of this matter.

Assignment

I have been asked by counsel representing Nike, Inc. (“Nike”) to provide this report in relation to Nike’s lawsuit against StockX, *Nike, Inc. v. StockX LLC*, No. 1:22-cv-00983-VEC (S.D.N.Y.). In preparing this report, I have relied on both materials produced between the parties as part of this proceeding and publicly available material. I performed in-depth analysis of the StockX Vault NFT smart contract by decompiling the smart contract code and analyzing each function. I looked at available information on the Ethereum blockchain to assess how the StockX Vault NFT smart contract has been used. I reviewed websites and social media, including the StockX website, the StockX Discord server, and StockX internal documents and communications. The list of documents I reviewed is included in Appendix A.

Factual Background

Background on Blockchain Technology and NFT Basics

At a high level, a blockchain is a ledger that records ownership and movement of certain digital assets in and between accounts, called “addresses.” A blockchain is conceptually similar to a bank ledger, which tracks ownership and movement of money in and between accounts, or land records, which track ownership and transfer of land across owners. The digital assets tracked and moved between addresses on a blockchain are typically referred to as “tokens.” Akin to airline frequent-flyer points (or arguably money held in a bank account), tokens are intangible assets. In short, blockchains keep track of how many of each type of token created on that particular blockchain is in each address and allows the owner of that address to send such tokens to another address.¹ The ledger entries are grouped into “blocks,” each of which may contain records of several thousand transactions. These blocks, in turn, are linked together to create the entire ledger, collectively called a “blockchain.”

What differentiates a blockchain from the other types of ledgers described above is that instead of being maintained privately by a centralized party (like a bank or a land title registry), a blockchain is typically maintained publicly by a collection of computers (up to hundreds of thousands or more) owned by unrelated individuals and entities, referred to as a “network.” In this sense, the ledger can be considered “decentralized” or “distributed.”²

There are many different types of blockchains, each with its own unique features and characteristics. The most well-known blockchains are the Bitcoin and Ethereum blockchains, but there are also many other blockchains that are used for a wide variety of purposes.

Background on Blockchain-Based Smart Contracts

Tokens on a blockchain are typically created and their attributes defined by developers in a computer program called a “smart contract” as well as in certain follow-up records published to the blockchain that reference that smart contract.³ Together, the smart contract and follow-up records will define various attributes of a token, such as how many of that type of token will or can be created, the addresses to which initial allocations of tokens will be sent (and from which they can then be transferred), whether the creator retains the right or ability to freeze movements of the tokens, and so on. Smart contracts are written as human-readable computer source code in a computer programming language. While token smart contracts can be created from scratch, there exist a number of standardized, prebuilt smart contracts (one in particular discussed below) that developers can copy and use to create new tokens.

Minting is the term used for the creation of NFTs. Minting NFTs can vary based on the smart contract implementation. Typically, a function (lines of code) in the smart contract enables the creation of unique tokens. The number of tokens and attributes related to the NFTs are based on parameters outlined in the underlying code. In most cases, minting NFTs from a smart contract is a one-time event that ends once the supply reaches a

¹ Blockchains can also perform other relatively simple computing functions not at issue here.

² This is accomplished through various clever mathematics and computer programming techniques, incorporating cryptography, hash functions, consensus, and various other concepts. How this is all implemented is quite complex and beyond the scope of this report.

³ Smart contracts may be confusingly named as they are not necessarily or even typically contracts in the legal or colloquial sense but are rather simple computer programs published and run on a blockchain.

pre-determined number. The minting process occurs on blockchain and can be done directly from the smart contract, or through a third-party marketplace like OpenSea.

Ethereum is the most-used blockchain for the creation of tokens, including non-fungible tokens (“NFTs”), the kind of token at issue in this lawsuit.⁴ As described below, StockX used the Ethereum blockchain to mint the Vault NFTs. The programming language used for the Ethereum blockchain—and by necessity the Vault NFTs—is called Solidity, a human readable computer language (or “source code”). To create a smart contract, the source code is “compiled,” that is, converted from human-readable computer code into computer-executable 1s and 0s, and sent to be published and executed on the public blockchain. Thus, the human-readable source code is not published to the blockchain. While “decompiler” programs can be used with a high degree of reliability to reconvert the published executable code back into source code for human examination, NFT projects will often publish the human-readable source code on a website so that third parties can verify the content (and security) of the underlying source code.

Background on Tokens and How They are Created, Tracked, and Transferred on a Blockchain

Fungible and Non-Fungible Tokens

To understand why NFTs are being adopted for various use cases, one must first understand the concept of fungibility. Fungibility is the ability of a good or asset to be interchanged with other individual goods or assets of the same type. An example of this is money. If you were to exchange a \$20 bill with your friend who also has a \$20 bill there would be no difference in the perceived value or use of these bills. Both are perceived to be interchangeable in value and use, or fungible. Similarly, if you deposit \$20 into your bank account, the bank does not keep track of that \$20 separate and apart from the rest of the money in your account. Rather, the bank simply adds \$20 to your account balance. Fungible assets are often divisible, at least to certain degrees. You can deposit \$1 into your bank account and ask the bank to transfer \$.50 to someone else. Certain tokens referred to as cryptocurrencies, such as Bitcoin or Ether, are both fungible and divisible.

By contrast, non-fungible assets have characteristics that make them unique and distinguishable from each other. An example of a physical non-fungible asset would be limited editions of artwork. Each edition has a serial number that denotes how many editions are in the series or collection and identifies the particular edition in relation to the total number that comprise the series or collection (e.g., 4/100). This unique identifier separates each edition of a particular work from another, making it a non-fungible good.

The tokens at issue in this lawsuit are marketed by StockX as “non-fungible” tokens (though as explained below this marketing is inaccurate and misleading). Although non-fungible tokens are referred to as “NFTs,” the term “NFT” is also colloquially used to represent a bundle of rights or attributes associated with a particular token, including, in many instances, the digital file associated with that token and certain perks or benefits attendant to owning an NFT.⁵

ERC 20 vs. ERC 721 vs. ERC 1155

There are three primary standardized smart contracts used to create and specify the attributes of tokens on the Ethereum blockchain: ERC-20 – Fungible Token Standard; ERC-721 – Non-Fungible Token Standard (NFT); and ERC-1155 – Multi-Token Standard.

⁴ Cem Dilmegani, *Top 3 Blockchains for NFTs*, updated Jan. 5, 2023, available at <https://research.aimultiple.com/nft-blockchains/>.

⁵ See *infra* History of NFT Marketplace and NFT Collectibles.

The ERC-20 fungible token standardized smart contract was built for fungible tokens, which means it can be used to create multiple tokens that are exactly the same in type and value. These attributes make the ERC-20 standardized contract a good choice for creating tokens intended to be used as currency or other mediums of exchange.

The ERC-721 non-fungible token standardized smart contract provides for the creation of non-fungible tokens on the Ethereum blockchain. Tokens created from an ERC-721 contract are uniquely identifiable and possess identifiers that can prove token ownership.

The ERC-1155 standard, commonly referred to as “Multi-Token” standard, is a more recent standard. It was initially designed to address limitations of the ERC-721 standard, namely, with ERC-1155, multiple different types of tokens, both fungible and non-fungible, can be created from the same smart contract. This capability makes the 1155 standard more flexible and scalable from a token production standpoint.

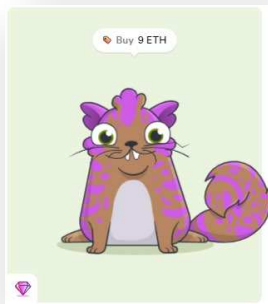
History of NFT Marketplace and NFT Collectibles

Rise of NFTs Beginning with ERC-721 and CryptoKitties

NFTs have been around since the early days of cryptocurrency, with the first NFTs being created on the Bitcoin blockchain as early as 2012. An early NFT called “Quantum” was created in 2014 on Namecoin, a forked version of Bitcoins software.⁶ However, it wasn't until the emergence of the Ethereum blockchain on July 30, 2015, that NFTs began to gain more widespread attention.

The ERC-721 and ERC-1155 token standards allow for the association and recording of certain data (called metadata) with each NFT. Often, this data comprises a link (a “Uniform Resource Locator” or “URL,” or a “Uniform Resource Indicator” or “URI”) to a text file, stored outside of the chain (such as on a computer controlled by the creator), that contains text information about the NFT, such as its name, description, and possibly a link to image or other media files.

One of the earliest and most well-known examples of NFT adoption or use is CryptoKitties, a game in which players buy, sell, and breed virtual cats using Ethereum-based NFTs.⁷ The popularity of CryptoKitties helped to bring mainstream attention to NFTs and sparked a wave of innovation in the space.



8

⁶ Jex Exmundo, *Quantum: The Story Behind the World's First NFT*, Mar. 21, 2023, available at <https://nftnow.com/art/quantum-the-first-piece-of-nft-art-ever-created/>.

⁷ <https://www.cryptokitties.co/>.

⁸ “CryptoKitties Catalogue” CryptoKitties, <https://www.cryptokitties.co/catalogue> (last visited Apr. 25, 2023).

Introduction of Popular NFT projects Like BAYC, Beeple, etc. and Development of NFT Craze in 2020-2021

Since the late-2010's, NFTs have been used for a variety of purposes. NFTs can represent ownership of physical assets such as real estate and fine art, or more digitally native products like profile pictures, collectibles, games, membership tokens, generative art, and more. Often, the metadata described above contains a link to a digital image or other media, and ownership of the NFT (which can be transferred) can confer on the holder of the NFT some terms and conditions. These terms can grant some sort of intellectual property right or license to the linked image or other media, as well as describe certain utilities and/or community membership rights, including access to exclusive events and social networks. For example, the popular NFT collection Bored Ape Yacht Club ("BAYC") comprises a number of NFTs that each link to a cartoon picture of an ape.⁹ Each picture associated with a BAYC NFT has a different combination of features, such as background color, ape facial expression, and ape attire, that renders it unique.¹⁰ According to the BAYC Terms and Conditions, ownership of a BAYC NFT confers on the current owner a worldwide, royalty-free license to use, copy, and display the associated art for personal, non-commercial use, as well as for certain additional, limited purposes.¹¹ BAYC holders are also granted access to BAYC's exclusive holders-only Discord server and in-person events.¹²



13

Azuki, a popular collection of NFTs linked to illustrations of anime-styled figures, similarly offers its holders access to an exclusive holders-only Discord server, streetwear collaborations, giveaways, and in-person events.¹⁴ Chiru Labs, the creator and issuer of the Azuki NFTs, also grants to its holders a worldwide, royalty-free license

⁹ <https://opensea.io/collection/boredapeyachtclub>.

¹⁰ <https://boredapeyachtclub.com/#/gallery>.

¹¹ <https://boredapeyachtclub.com/#/terms>.

¹² "What Is Bored Ape Yacht Club?" Cryptopedia, June 28, 2022, *available at* <https://www.gemini.com/cryptopedia/what-is-bored-ape-yacht-club-nft-bored-apes>.

¹³ Bored Ape # 1, <https://opensea.io/assets/ethereum/0xBC4CA0EdA7647A8aB7C2061c2E118A18a936f13D/1>.

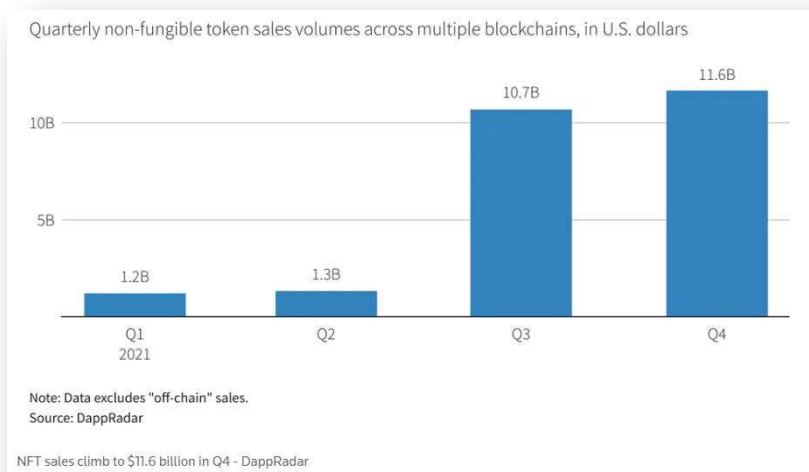
¹⁴ <https://www.azuki.com/garden>; James Ellis, "Azuki NFT Collection Announces Streetwear Collab with AMBUSH," NFTevening, Nov. 7, 2022, *available at* <https://nftevening.com/azuki-nft-collection-announces-streetwear-collab-with-ambush/>.

to use, copy, reproduce, and display the associated Azuki NFT art for personal, non-commercial use, as well as for commercial use, subject to certain limitations.¹⁵



16

The market for NFTs has grown significantly since inception. NFTs initially sold by creators can typically be resold on one or more marketplaces, with millions of dollars' worth of NFTs being bought and sold every month. 2021 was broadly considered the "Year of the NFT,"¹⁷ during which NFT supply and demand exploded. Brands explored NFTs to connect further with their audiences and create new revenue streams. Sales of NFTs jumped to more than \$25 billion in 2021 reflecting over a 21,000% surge from 2020's total sales of \$94 million.



18

¹⁵ Azuki NFT License Agreement, last revised on May 5, 2022, available at <https://www.azuki.com/license>.

¹⁶ Azuki #5620, <https://www.azuki.com/gallery?id=5620>.

¹⁷ *The Year of the NFT*, available at <https://www.theverge.com/23141561/nft-boom-token-mint-artists-collectors-auction>.

¹⁸ <https://www.reuters.com/markets/europe/nft-sales-hit-25-billion-2021-growth-shows-signs-slowing-2022-01-10/>

Positive market sentiment toward NFTs peaked at the end of 2021 and beginning of 2022. In March of 2021 an obscure digital artist, known as Beeple, sold an NFT associated with a collage of his digital artworks for a record-setting \$69 million.¹⁹ In January 2022, \$17.2 billion was traded on the NFT market, \$13 billion more than in August 2021.²⁰

Common Themes, Values, and Aspects of NFT Projects and the Marketplace

A commonly posed question is what gives NFTs the value and price they command on marketplaces. The question is difficult to answer, as buyers are not uniform and prices may reflect any number of factors. Common things that NFT purchasers may look for when buying NFTs—and which NFT creators or issuers include as part of their NFT offering—include the appeal of any associated media (such as art, images, videos, or digital collectible items), the creator’s marketing strategies, the creator’s outreach on social media (including Twitter), whether NFT ownership will confer membership to an exclusive community such as a Discord (messaging app) server (which may include celebrities or well-known figures in business, tech, and culture), whether NFT ownership will confer social status or clout, the value of any associated physical assets or real-life benefits (such as event access), and the creator’s promises of future utility, access, and/or value to be delivered at a later date. Some NFT purchasers treat NFTs as investment assets. With all of the new and innovative ways companies are exploring NFTs, the term “NFT” refers to more than just a token on a blockchain—it is colloquially understood to encompass a collection of benefits, additional rights, and access to exclusive communities and builders in the Web3 space, as well as any visual representation of the token or associated artwork. As discussed below, StockX shared this understanding and leveraged many of these strategies in marketing and selling its Vault NFTs.

As previously mentioned, traditional and popularized NFTs in competitor marketplaces are not simply expensive profile pictures for buyers; the artwork stands as a placeholder for:

- ◆ Clout and/or influence based on exclusivity and perceived social utility of the community
- ◆ A community that brings the buyer networking opportunities, relationships, support, meaning... etc.
- ◆ Financial and/or status-based benefits (free merchandise, giveaways, events...)
- ◆ An investment in the group/project and (theoretically) an asset with increased future value a.k.a. a bet

21

NFT project creators will often market their NFT projects in ways that stimulate demand for and highlight the above aspects of their NFT offerings. For example, Yuga Labs’s flagship BAYC NFT collection markets the brand through storytelling, experiences, and community. Storytelling is realized through animated short trailers and tweets. The storyline is developed by a studio of artists and writers building out the BAYC universe. Yuga also gives owners of Apes and other interconnected assets utility in the form of in-person events (*i.e.*, ApeFest). These events have garnered considerable media attention in the NFT community and set a high standard as to what purchasers sometimes expect by holding these NFTs. Building a vibrant community in NFTs is a challenging feat. Yuga has done this through other NFT collection releases for holders of existing assets (*e.g.*, Mutants,

¹⁹ Kelly Crow and Catlin Ostroff, *Beeple NFT Fetches Record-Breaking \$69 Million in Christie’s Sale*, The Wall Street Journal, March 21, 2021, available at <https://www.wsj.com/articles/beeple-nft-fetches-record-breaking-69-million-in-christies-sale-11615477732>.

²⁰ Shanti Escalante-De Mattei, *NFT Trading Volume is Reportedly Down 97 Percent Since January*, ART News, September 29, 2022, available at <https://www.artnews.com/art-news/news/nft-trading-volume-down-97-since-january-artnews-1234641141/>.

²¹ STX0019820, Page 10.

metaverse land, and dogs). The new NFT collections that Yuga releases are done in concert with their developing animated storyline. These NFT drops have primarily followed a roadmap that Yuga developed from its inception in April 2021. Another critical contribution to Yuga's success was celebrity attention. When celebrity comedian Jimmy Fallon purchased a Bored Ape for \$224,000 in November 2021,²² the perceived value of these assets skyrocketed, and other big celebrities also bought in (e.g., Justin Bieber, Eminem, Stephen Curry, and more). As a result of all the mainstream attention, BAYC NFTs became a status symbol for celebrities and a sign of clout for NFT influencers on Twitter.

Another example of an NFT project using a creative marketing strategy and celebrity endorsements is the World of Women (WoW) NFT collection. Film actress Reese Witherspoon and her Hello Sunshine media company forged a storytelling partnership with WoW.²³ This partnership not only leveraged a celebrity endorsement but also utilized Witherspoon's media company to develop feature films and build out the intellectual property around the WoW brand. The partnership offered the potential for in-person events with other women-led NFT projects. The overarching goal was to increase awareness of WoW and other NFT-related projects. Other endorsements followed, leading to WoW's second NFT collection World of Women Galaxy (WoWG). Gwyneth Paltrow promoted the launch of this second collection by giving out allow-list²⁴ spots to users on Twitter.²⁵ This type of engagement is prevalent among projects to drive recognition, demand, and reach new audiences.

NFT projects may use one of two token custody and control models: (1) where NFT owners control the address in which their NFTs sit and can thus transfer them directly on the blockchain, including through one or more third-party marketplaces (such as OpenSea) that allow trading and sale of user-custodied NFTs (in exchange for fiat currency or cryptocurrency); and (2) where the NFT creator or issuer does not transfer the NFT to a purchaser's address or between purchaser addresses, but instead the NFT creator or issuer maintains its own website and platform for the sale and any secondary trading of the NFTs, and the creator or issuer keeps the NFTs in addresses that it controls and tracks ownership of the NFTs between its users on internal databases rather than on the blockchain.²⁶ The latter model trades some of the advantages of blockchain technology—such as a public record of ownership and transfer, and customer control—for other features, such as simplicity and cost savings. Regardless of which of the two models an NFT project uses, project creators should take care to clearly represent to consumers the actual use and function of the underlying blockchain-based NFTs and their relationship to the more broadly defined collectible NFT (i.e., the set of rights and benefits conferred by ownership). As will be shown here, StockX took no such care.

The StockX Vault NFT Offering

StockX was founded in 2015 as an online resale marketplace for collectible shoes, and later grew to encompass streetwear, electronics, luxury handbags, and other collectibles. StockX's marketplace is accessible to buyers and sellers on StockX's website and mobile app. Other than its NFT offerings and a few StockX-branded shirts and

²² Andrew Hayward, *The Biggest Celebrity NFT Owners in the Bored Ape Yacht Club*, Decrypt, March 27, 2022, available at <https://decrypt.co/86135/biggest-celebrity-nft-owners-bored-ape-yacht-club>.

²³ Brent Lang, *Reese Witherspoon's Hello Sunshine, World of Women Partner to Adapt NFTs Into Movies, TV Shows*, Variety, Feb. 17, 2022, available at <https://variety.com/2022/film/news/reese-witherspoon-hello-sunshine-world-of-women-partner-nft-movies-tv-shows-live-events-1235185212/>.

²⁴ "Allowlists" are lists of wallet addresses with exclusive NFT minting rights, similar to a whitelist, ensuring early access to NFT collections - <https://cointelegraph.com/news/what-is-an-nft-whitelist-and-how-can-you-join-one>.

²⁵ <https://web.archive.org/web/20220322183814/https://twitter.com/GwynethPaltrow/status/1506339403622363140>

²⁶ Although NFT terminology is far from standardized, the former model is often referred to as "custodial," and the latter model is often referred to as a "walled garden."

sweatshirts, StockX generally does not sell goods directly to consumers, but instead facilitates transactions between buyers and sellers and serves as an active intermediary—the seller ships the item to StockX, StockX receives and purportedly verifies the item’s authenticity, StockX then ships the item to the buyer with a StockX-branded verification badge, and StockX pays the seller (less its transaction fees). StockX promotes its product authentication process as a key value proposition for consumers and has claimed that every item sold on its marketplace—including physical items associated with the Vault NFTs—has been independently verified by StockX as “100% Authentic.”²⁷ Prior to 2022, StockX had no involvement with or connection to the NFT market.

Vault NFT Launch & Promotion

Beginning on January 18, 2022, StockX marketed and sold on its website what it calls “Vault NFTs,” as part of its “Vault NFT experience.” An example is shown below:



28

StockX marketed the Vault NFTs as “new” and “exclusive” “digital tokens providing unprecedented access and utility for [StockX’s] global community,” and as “investable digital assets,” “backed by a physical product held in StockX’s custody, tied directly one-to-one via the blockchain.”²⁹ Specifically, StockX represented that each Vault NFT is associated with a physical good stored in “brand new, climate controlled, high security vaults inside StockX facilities.”³⁰

²⁷ NIKE0000052, Page 1. During the course of this litigation, StockX modified its claims about product authentication and revised the language it uses to discuss its purported verification process.

²⁸ Id.

²⁹ NIKE0000055, Pages 1, 2; NIKE0000052, Page 1.

³⁰ NIKE0000055, Page 2.

Collect What's Next

Introducing NFTs on StockX

Welcome to the future of StockX, where authentic products of current culture are now on-chain.

Introducing NFTs on StockX, new digital tokens providing unprecedented access and utility for our global community. These exclusive NFTs connect coveted physical products with investable digital assets, from sneakers to creators to experiences and more.

The future of culture is here.

31

Own the most popular releases digitally and start saving on fees (and closet space). Each Vault NFT is tied to the same physical item, stored in our brand new, climate-controlled, high-security vaults inside StockX facilities.

32

StockX's initial Vault NFT offerings were associated with highly collectible shoes. Of the first nine Vault NFTs released in January 2022, eight were associated with Nike shoes and one was associated with adidas shoes. StockX represented to consumers that "[a]ny item in the StockX Vault is Verified Authentic,"³³ meaning that it is subject to StockX's "proprietary, multi-step authentication process."³⁴

As visual representations of each Vault NFT, StockX created high-resolution, appealing images that prominently feature a photograph of the associated "vaulted" physical shoe. The realistic image of the physical shoe is the dominant design element of the Vault NFT images, placed in the center and layered atop a translucent "card," which is itself layered atop an ovular blob resembling a wax seal. The "card" element features a spirographic design and three groupings of text: (1) "StockX" on the upper lefthand corner oriented along the short edge of the card; (2) "Vault NFT ERC-1155" on the lower lefthand corner oriented along the long edge of the card; and

³¹ Id. at Page 1.

³² Id. at Page 2.

³³ NIKE000130, Page 1.

³⁴ StockX Answer to First Amended Complaint (ECF No. 41).

(3) three repeating lines of text bearing the name of the shoe style, on the right side of the card oriented along the short edge. Another example of a Vault NFT image is shown below:



35

The photographs incorporated into the Vault NFT images are not of the actual shoes held in StockX’s “vault” and supposedly uniquely linked to each NFT, but instead are stylized examples of the particular shoe style that prominently depict the product and manufacturer’s trademarks, such as the Nike shoe and marks shown in the above example.

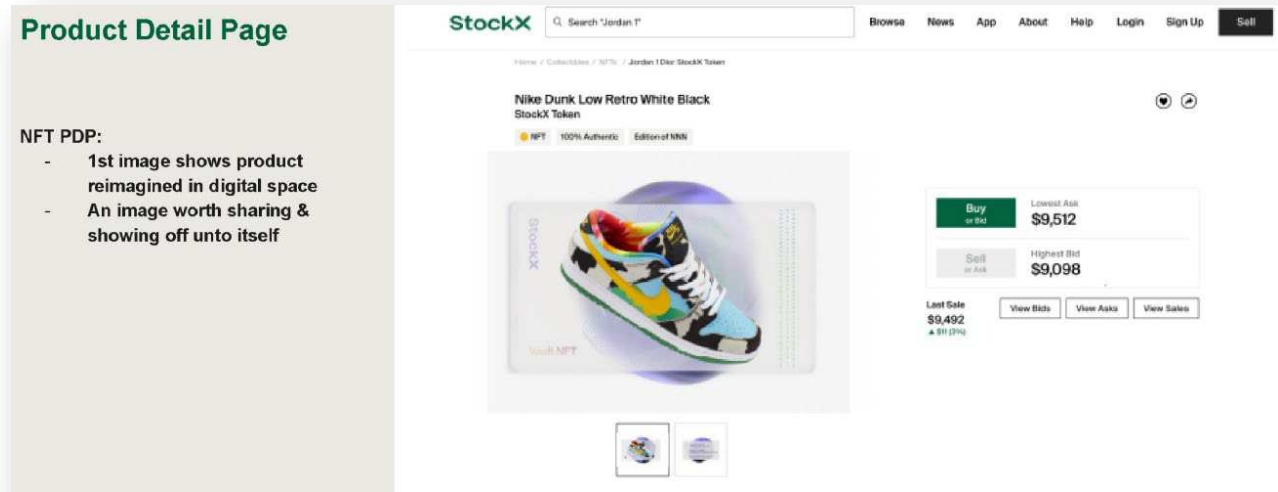
³⁵ <https://bafybeieiy76iqfguxhiyyionuki7g6exufoyo43lf7ks6vqib3sts7rg4.ipfs.dweb.link/>.

³⁶ STX0445340, Page 2.

³⁷ Id.

³⁸ Id at Page 4.

StockX's focus on the aesthetics and appeal of the Vault NFT imagery is further evidenced in a slide deck prepared prior to the January 18 launch, which references a Vault NFT image and states, "1st image shows product reimaged in digital space" and states that the Vault NFT image is "[a]n image worth sharing & showing off unto itself."⁴⁰ An example of this proposed first image is shown below. In addition to widely disseminating the Vault NFT images on its social media channels, StockX features the Vault NFT images throughout its website, including it as the primary product image displayed on Vault NFT PDPs and within the StockX user portfolios of those who purchased any Vault NFTs.



41

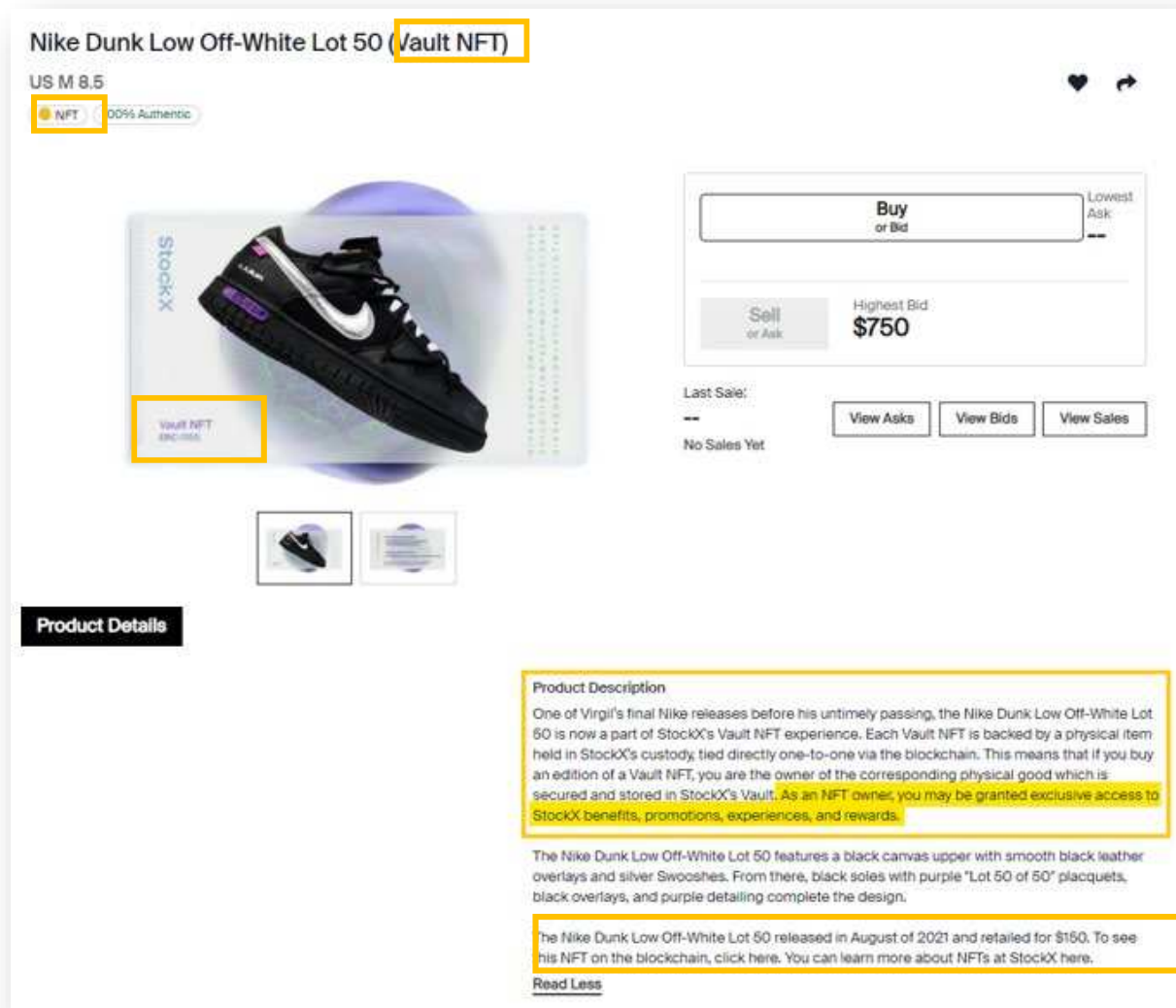
On the Vault NFT PDPs, StockX promoted the Vault NFTs as "100% Authentic," limited edition "NFTs," ranging from as many as 250 editions per NFT to unique one-of-one editions.⁴² The Vault NFT PDPs prominently indicate that the products are NFTs in several ways, including through the inclusion of "(Vault NFT)" at the end of the product title, a unique "NFT" badge icon, product images that bear digital art and the text "Vault NFT ERC-1155," and the product description language. StockX also touted as a privilege of ownership the fact that "[a]s an NFT owner, you may be granted exclusive access to StockX benefits, promotions, experiences, and rewards," and provided a link for consumers to "see *this NFT* on the blockchain" (emphasis added).⁴³

⁴⁰ STX0283867, Pages 7, 8.

⁴¹ Id.

⁴² StockX's physical products and StockX's Vault NFTs are offered and sold to consumers on completely different webpages and organized on the StockX website and mobile app under their own respective product categories or "verticals" as StockX calls them.

⁴³ <https://web.archive.org/web/20220118181750/https://stockx.com/dunk-low-off-white-lot-50-vault-nft>.



44

StockX published similar claims about the benefits of Vault NFT ownership on a specialized NFT landing page on the StockX website ("Owners may also receive exclusive access to StockX releases, promotions, events, as a result of ownership")⁴⁵ and within the token metadata ("As an NFT owner, you will be granted exclusive access to StockX benefits, promotions, experiences, and rewards.").⁴⁶

StockX also added a new "NFTs" tab to its user "Portfolio" feature. As shown below, the NFT tab allows users to track and display their Vault NFT purchases separate and apart from physical goods they have purchased on StockX's platform.

⁴⁴ <https://web.archive.org/web/20220118181750/https://stockx.com/dunk-low-off-white-lot-50-vault-nft>.

For demonstrative purposes, this image was compiled as a composite image. Please refer to the link or document name to view the original.

⁴⁵ NIKE0000055, Page 2.

⁴⁶ NIKE00005663, Page 2.

Your Portfolio

NFTs

Products

Name



Air Jordan 4 Retro White Ore...
US M 10



KAWS Sacai Nike Blazer Low ...
US M 10

47

StockX used a website landing page, titled “Collect What’s Next,” as a hub for information about its NFT offerings.

The screenshot shows the StockX NFT website landing page. The header features the StockX logo and a large 'X NFTs' graphic. The main heading is 'Collect What's Next'. Below this, there is a section titled 'Introducing NFTs on StockX' with the following text:

Welcome to the future of StockX, where authentic products of current culture are now on-chain.

Introducing NFTs on StockX, new digital tokens providing unprecedented access and utility for our global community. These exclusive NFTs connect coveted physical products with investable digital assets, from sneakers to creators to experiences and more.

The future of culture is here.

Below the text are two images of sneakers: a colorful, patterned sneaker and a black and white Nike Dunk sneaker.

On the right side of the page, there is a section titled 'The Vault' which displays a grid of 12 sneakers, each with a corresponding NFT label. The labels include:

- (Vault NFT) Jordan 1 Retro High OG Patent Bred
- (Vault NFT) Nike Dunk Low Retro White Black
- (Vault NFT) KAWS Sacai Nike Blazer Low Blue
- (Vault NFT) Air Jordan 4 Retro White Ore
- (Vault NFT) Nike Dunk Low Off-White Lot 50
- (Vault NFT) Women's Exclusive Air Jordan 3 Retro A Ma Manière
- (Vault NFT) adidas Forum Low Bad Bunny
- (Vault NFT) Nike SB Dunk Low Ben & Jerry's Chunky Dunky
- (Vault NFT) Women's Nike Air VaporMax 2019 Cactus Plant Flea Market

Below the grid, there is a paragraph explaining the Vault NFT concept:

Own the most popular releases digitally and start saving on fees (and closet space). Each Vault NFT is tied to the same physical item, stored in our brand new, climate-controlled, high-security vaults inside StockX facilities.

So if you're bullish on a shoe, consider investing in a Vault NFT. You take possession of the NFT immediately after the transaction is complete, meaning it is the fastest way to flip. And with no shipping costs, and market-leading low seller fees at a fraction of the cost, there's a lower hurdle for profitability.

Every NFT is minted on the blockchain, offering owners the opportunity to invest in current culture, with cross-platform liquidity on the horizon. Owners may also receive exclusive access to StockX releases, promotions, events, as a result of ownership.

48

⁴⁷ STX0013332, Page 1.

⁴⁸ NIKE0000055, Pages 1, 2. For demonstrative purposes, this image has been modified to display the first two pages of the original document. Please refer to the link or document name to view the original.

The landing page features an email mailing list sign-up form and a “roadmap” setting forth StockX’s plans to expand its NFT offerings and features. “Roadmaps” are commonly published by NFT creators to educate consumers about an NFT project’s immediate and future plans for development and expansion. Roadmaps have become customary in the NFT space as consumers look to a project’s roadmap to assess its legitimacy and prospective value. StockX’s NFT roadmap as of February 2, 2022 is shown below:



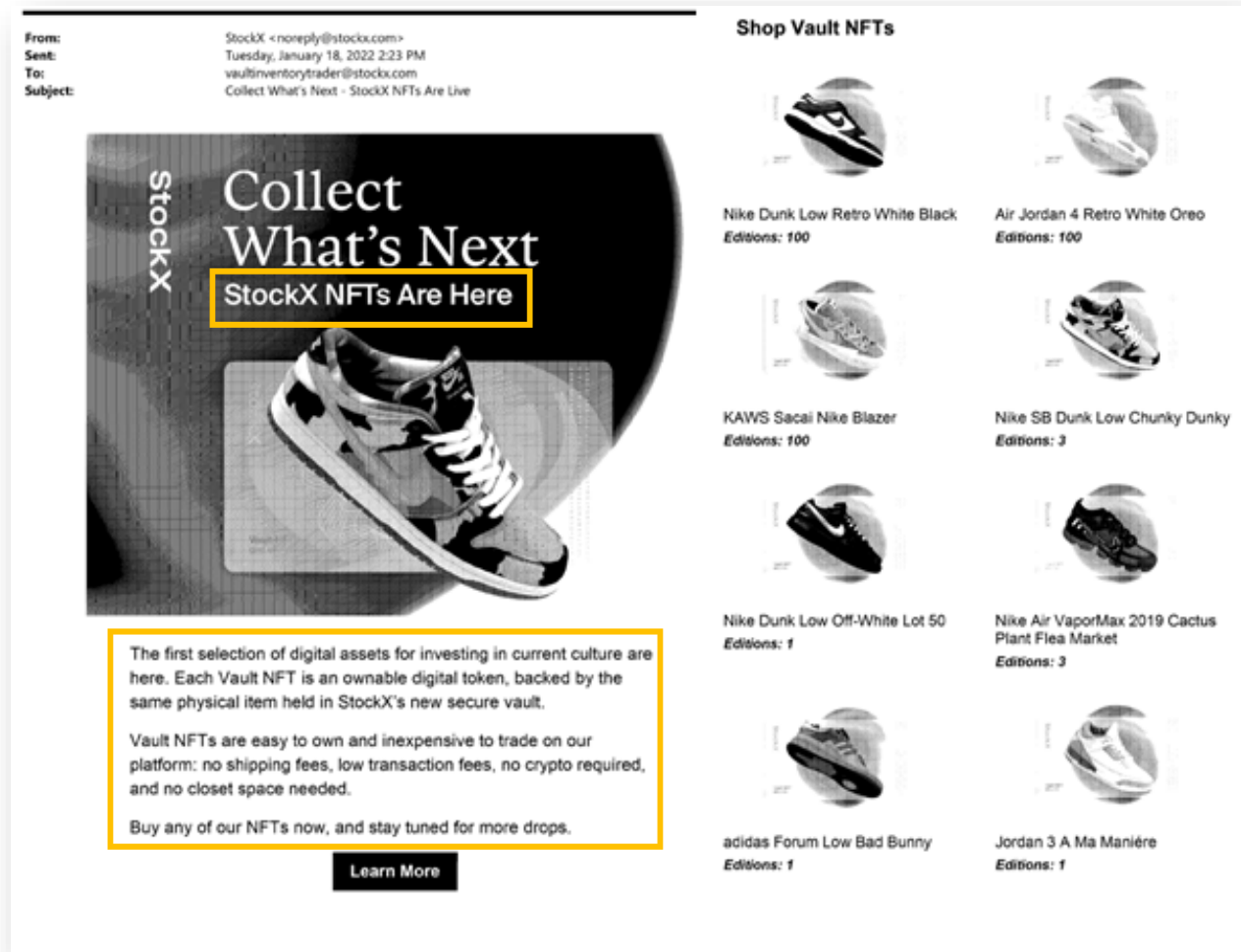
49

StockX also engaged in an email and message mass marketing campaign to promote its NFT offering. StockX sent millions of email blasts and push messages to its users announcing and promoting the Vault NFTs.⁵⁰ These messages featured the Vault NFT images, including seven images of Vault NFTs associated with Nike shoes and a

⁴⁹ NIKE0000055, Page 3.

⁵⁰ STX0163937, Page 25.

prominent banner or header image of the Vault NFT associated with the Nike SB Dunk Low “Chunky Dunky” shoe. These promotional messages also emphasized the NFT aspect of the Vault NFT offering by referring to the Vault NFTs as “StockX NFTs,” “digital assets,” and “ownable digital token[s].”⁵¹ For example, on January 18, 2022, StockX sent the following email to its users:



52

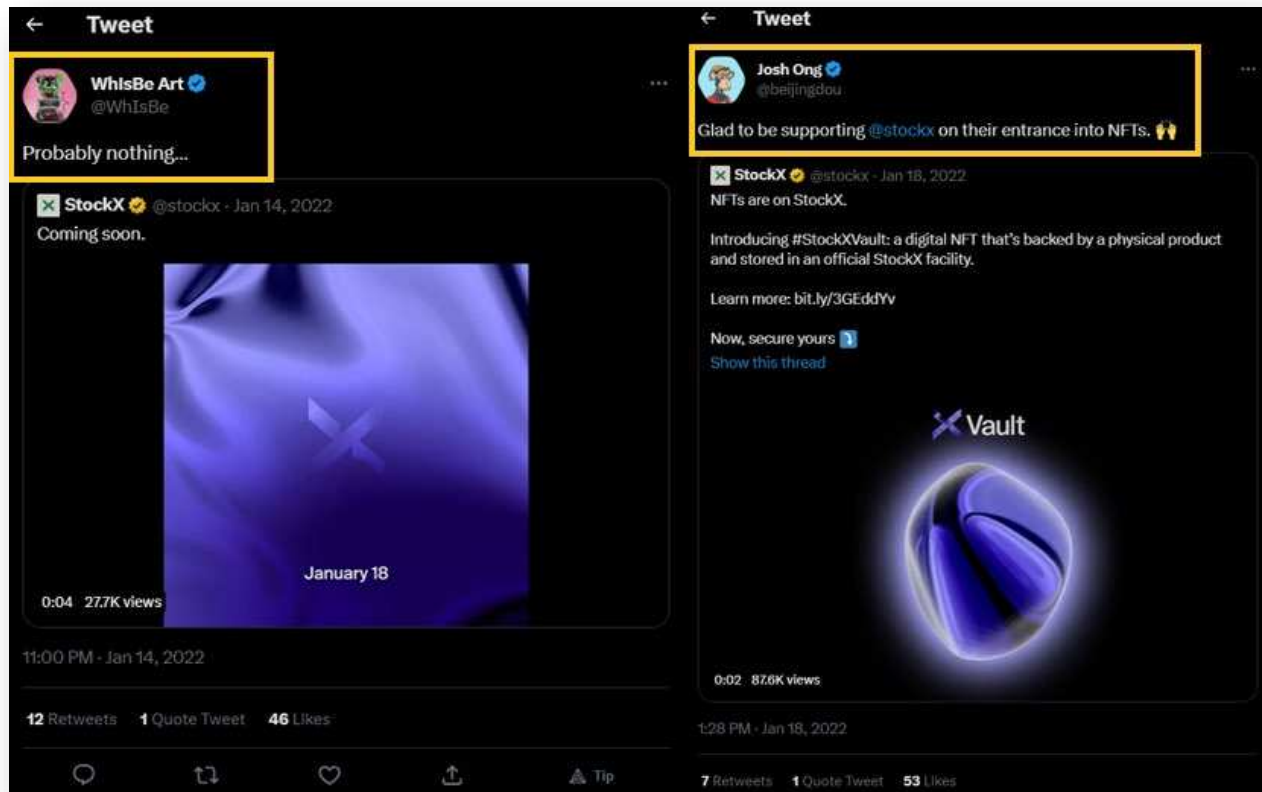
In addition to promoting the Vault NFTs on its website and through email campaigns targeting its platform users, StockX also promoted and advertised the Vault NFTs across several social media platforms, namely Twitter and Instagram, as well as Discord, a platform extensively used in the NFT space.⁵³ To guide and amplify its Vault NFT

⁵¹ STX0001275, Page 1.

⁵² STX0001275, Pages 1, 2. For demonstrative purposes, this image was compiled as a composite image. Please refer to the link or document name to view the original.

⁵³ Twitter and Discord are historically the primary channels through which NFT project creators communicate and engage with their consumers and the general public about their project and future offerings or features.

promotion strategy, StockX engaged artists, influencers, and investors active in the NFT space, such as WhIsBe⁵⁴ and Josh Ong.⁵⁵ As shown below, both WhIsBe and Mr. Ong promoted the Vault NFTs on their respective social media channels. Artists like WhIsBe and NFT influencers like Josh Ong are frequently used by NFT creators to drive interest in their products. Josh Ong is a well-known name in the NFT space. He is a cofounder of what is currently known to be a renowned consulting agency and NFT fund that partners with brands to strategize and build communities in the Web3 space. Josh is also one of the seven Bored Ape Yacht Club council members.⁵⁶ This position reflects Josh's influence in the NFT and Web3 space.



57

Beginning on or around January 14, 2022, StockX teased the upcoming Vault NFT releases with a series of social media posts, including the following January 17, 2022, tweet, which features a video depicting silhouettes of the

⁵⁴ STX0026166, Page 1. (“to engage utilizing Whisbe, Josh, other creators’ own grassroots community channels to do the lifting of ‘teasing’ for us and driving to the fusionary page”); STX0365016 (referring to attached “StockX NFT Ambassador/Consultant Agreement” intended for use with Josh Ong, WhIsBe and others; attached agreement draft withheld for privilege); STX0139557, Page 6 (discussing reaching out to WhIsBe and Josh Ong in the days leading up to the Vault NFT launch to promote the launch, and confirming StockX and Ong entered into a non-disclosure agreement).

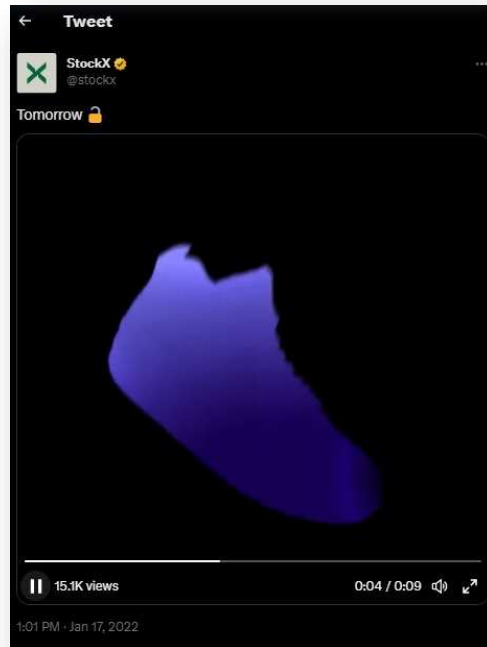
⁵⁵ Id.; see also, e.g., STX0046789, Page 1; see also STX0080073, Page 7 (“We’re gonna give Josh Ong \$5k per month”).

⁵⁶ Eli Tan, *Bored Ape Creator Yuga Labs Unveils Community Council to Help Shape Future Initiatives*, CoinDesk, Oct. 5, 2022, available at <https://www.coindesk.com/web3/2022/10/05/yuga-labs-unveils-bayc-community-council-to-help-shape-future-initiatives/>.

⁵⁷ <https://twitter.com/WhIsBe/status/1482201110454542340>;

<https://twitter.com/beijingdou/status/1483506576761704459>.

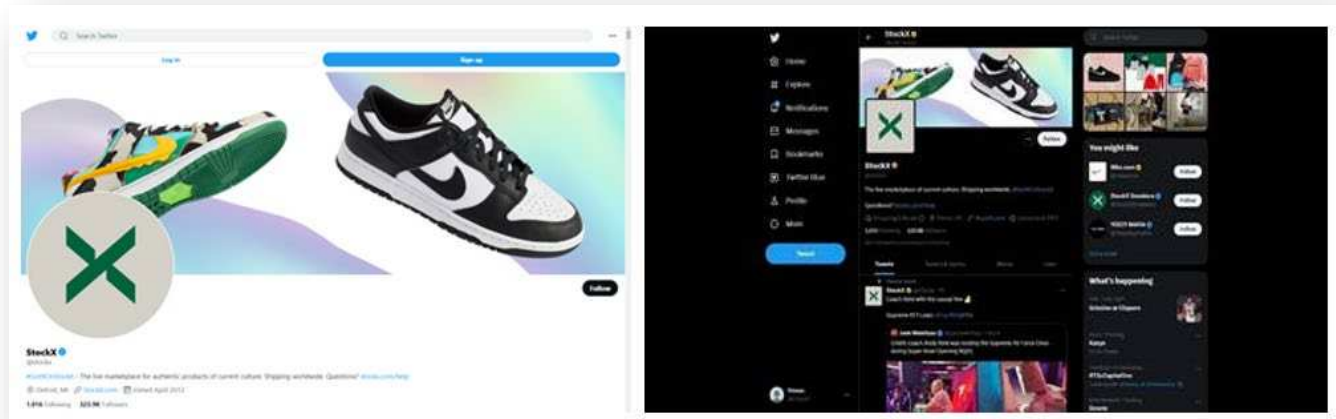
shoes associated with the initial collection of Vault NFTs. These silhouettes were primarily composed of Nike Vault NFT editions that were set to be released the following day, such as the Nike Air Jordan 4 silhouette shown below:



58

StockX also changed the banner image displayed on its Twitter account to mirror one of the banner images incorporated into the “Collect What’s Next” landing page. As shown below, the banner image in question depicts two Nike shoes associated with Vault NFTs, the Nike SB Dunk Low “Chunky Dunky” and Nike Dunk Low Retro White Black:

⁵⁸ <https://twitter.com/stockx/status/1483137506392612869?cxt=HHwWioC52YftIJUpAAAA>.



59

On the date of launch, January 18, 2022, StockX tweeted a video promoting the Vault NFTs and the following text: “NFTs are on StockX. Introducing #StockXVault: a digital NFT that’s backed by a physical product and stored in an official StockX facility. . . . Now, secure yours . . .”⁶⁰ Within the same thread, StockX published eight additional tweets promoting each of the initial Vault NFTs released on January 18, 2022. Each of these subsequent tweets includes a video depicting a Vault NFT image that has been animated with a “pop-out” effect that enlarges the photograph of the physical shoe relative to the background elements of the NFT image.⁶¹

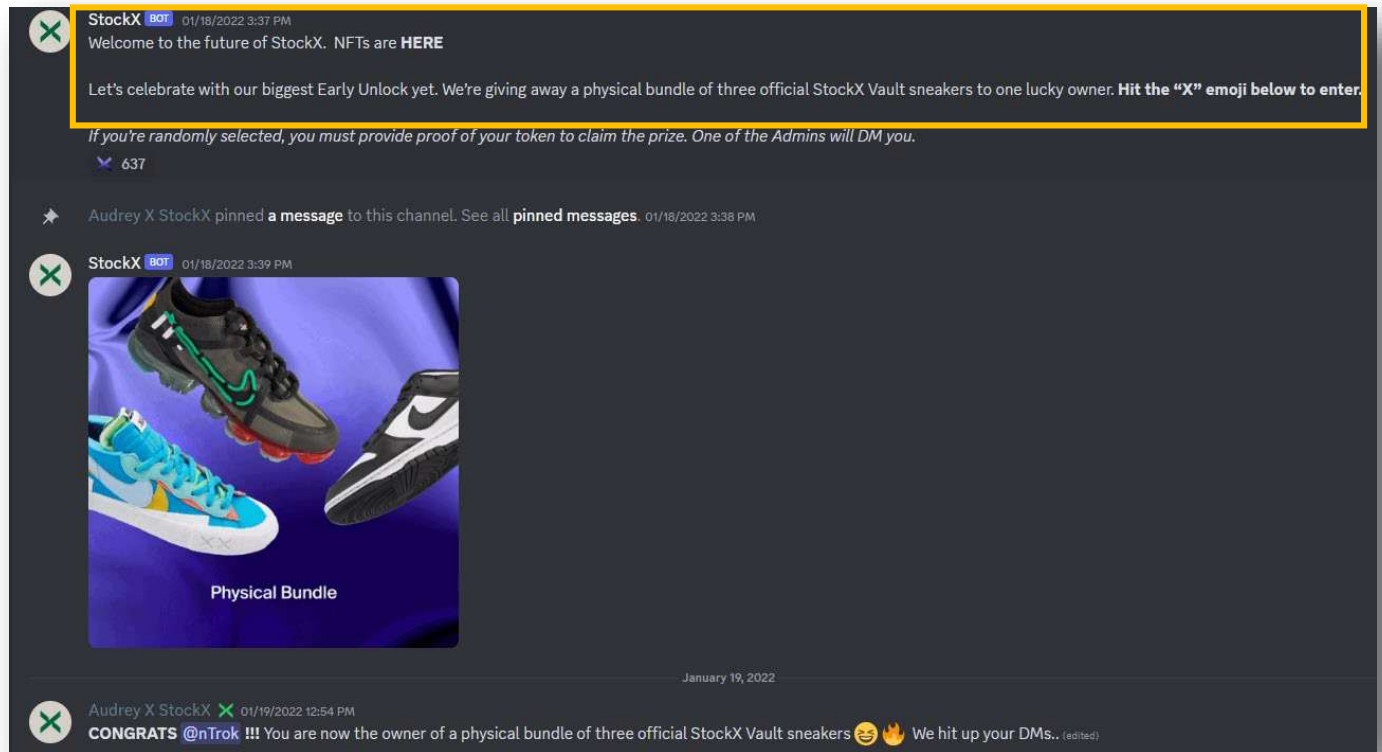
On its Discord server, StockX added several new channels devoted to the Vault NFTs (including, # nft-chatter, # roadmap, and # vault-flex) and ran promotional giveaways of StockX site credit and physical shoes to build awareness of and interest in the Vault NFTs prior to launch. StockX called these pre-launch giveaways “early unlocks,” and described them as “a taste of what ownership of NFTs on StockX means, from site credit and product, to creators, events, and more.” StockX also added a “countdown” channel, in which it published posts counting down the days until the January 18, 2022, launch.

After launch, StockX continued to promote the Vault NFTs on Discord by announcing subsequent NFT releases or “drops,” and engaging with its Discord community members through employee-operated moderator accounts. StockX also created private Discord channels, such as “# x-nft-owner and # nft-unlocks”, and restricted access to these channels to consumers who verified their purchase and ownership of a Vault NFT. On the # nft-unlocks channel, StockX announced special rewards and giveaways (*i.e.*, “unlocks”) given only to verified Vault NFT purchasers. For example, on January 18, 2022, StockX announced the first Vault NFT owner-only “unlock” to be a “a physical bundle of three official StockX Vault sneakers” (*i.e.*, three pairs of Nike shoes) to be given away to a single Vault NFT owner:

⁵⁹ <https://web.archive.org/web/20220616190147/https://twitter.com/stockx>.

⁶⁰ <https://twitter.com/stockx/status/1483501803182374922?lang=en>.

⁶¹ <https://twitter.com/stockx/status/1483501826754416641>; <https://twitter.com/stockx/status/1483501849328168966>; <https://twitter.com/stockx/status/1483501867090984961>; <https://twitter.com/stockx/status/1483501889715060746>; <https://twitter.com/stockx/status/1483501907805188111>; <https://twitter.com/stockx/status/1483501925987401736>; <https://twitter.com/stockx/status/1483501946145316868>; <https://twitter.com/stockx/status/1483501964252090374>.



62

Vault NFT Terms

The Vault Terms⁶³ provided under section 29 of the StockX Terms and Conditions of Use state that the Vault NFTs represent ownership of physical goods stored in a StockX facility.⁶⁴ The Vault Terms also state that when a Vault NFT is purchased, the buyer owns both the Vault NFT *and* the stored item to which it corresponds.⁶⁵ Despite StockX's representations that Vault NFT ownership confers access to exclusive benefits and services, the Vault Terms also inconsistently state that a Vault NFT has no value beyond the associated stored item.⁶⁶ The Vault Terms define ownership as subject to ongoing compliance with the Vault Terms.⁶⁷ The buyer/owner retains sole ownership of the stored item as long as it is stored in a StockX facility and maintains ownership of

⁶² Discord Giveaway Messages – Physical Bundle of Three Official StockX Vault Sneakers (January 18, 2022).

⁶³ StockX has made numerous changes to its Terms and Conditions since the January 18, 2022, launch. Any alterations made to terms language discussed in this report will be noted in a footnote.

⁶⁴ StockX Terms and Conditions of Use, <https://stockx.com/terms>.

⁶⁵ Id. The current version of the Vault Terms states: "When you purchase a Vault NFT, you *own* the Vault NFT you purchased and the Stored item it corresponds to." See <https://stockx.com/terms> (emphasis added). An earlier version dated January 18, 2022 states: "'When you purchase a Vault NFT, you *gain title to both* the Vault NFT you purchased and the Stored item it corresponds to.'" NIKE0000253, Page 8 (emphasis added).

⁶⁶ Id.

⁶⁷ Id.

the associated Vault NFT.⁶⁸ If the buyer elects to sell the Vault NFT on the StockX platform, ownership of the Vault NFT and the associated stored item will be transferred to the new buyer.⁶⁹

The Vault Terms also define StockX's storage of a physical item associated with a Vault NFT as the "Vault Services."⁷⁰ Per the Vault Terms, by purchasing a Vault NFT the purchaser "automatically make[s] use of the Vault Services" and "the Vault Services are currently provided at no additional cost; however, you may be required to pay additional fees if you elect to have a Stored Item shipped to you or if you use the Vault Services beyond a certain amount of time" ⁷¹ The Vault Terms also state if the owner of the Vault NFT chooses to elect to have the stored physical item shipped, the Vault Services will terminate, and the Vault NFT will be permanently removed from the owner's portfolio and removed from circulation.⁷²

According to the Vault Terms, StockX also intends to charge Vault NFT holders for the Vault Services beginning February 1, 2023:

Through January 31, 2023, the Vault Services will be provided free of charge until and unless you elect to have Stored Items shipped to you or you sell them to another buyer via the StockX platform. Beginning February 1, 2023, StockX will charge you a monthly fee for the provision of the Vault Services equal to .15% of the value of each Stored Item that you own, with a minimum monthly charge of ten (10¢) cents for each trading card and one (\$1) for each pair of sneakers or other Stored Item.⁷³

The Vault Terms further state that "StockX may choose to stop offering the Vault Services for any reason or no reason at any time upon thirty (30) days' notice to you, in which event StockX will deliver the Stored Items to you at the address listed on your account, or to a different address if provided by you in writing within ten (10) days of StockX's notice of termination of the Vault Services."⁷⁴

⁶⁸ Id.

⁶⁹ Id. The current version of the Vault Terms states: "Notwithstanding, if you sell a Vault NFT via the StockX platform, *ownership of that Vault NFT and the associated Stored Item will transfer to the new buyer.*" See <https://stockx.com/terms> (emphasis added). An earlier version dated January 18, 2022 states: "Notwithstanding, if you sell a Vault NFT via the StockX platform, *title to that Vault NFT and the associated Stored Item will transfer to the new buyer.*" NIKE0000253, Page 8 (emphasis added).

⁷⁰ Id.

⁷¹ Id.

⁷² Id. The current version of the Vault Terms states: "Upon electing to have a Stored Item delivered, you cease to make use of the Vault Services and the corresponding Vault NFT will be permanently removed from your portfolio *and from circulation.*" See <https://stockx.com/terms> (emphasis added). An earlier version dated January 18, 2022 states: "Upon electing to have a Stored Item delivered, you cease to make use of the Vault Services and the corresponding Vault NFT will be permanently removed from your portfolio." NIKE0000253, Page 8.

⁷³ Id.

⁷⁴ Id.

Vault NFT Smart Contract

ERC-1155

StockX minted the Vault NFTs as ERC-1155 tokens on the Ethereum blockchain.



76

Fungibility of NFT Editions

StockX used the ERC-1155 Multi-Token Standard to create collectible NFTs that depict stylized images of physical shoes, watches, action figures, trading cards and skateboard decks stored in their “vault.” The physical shoes depicted on the Vault NFTs were, for each set of NFTs, the same make, model, year, size, and color. The 1155 standard provides for the creation of both fungible and non-fungible tokens. StockX used its smart contract to create limited numbers of fungible token editions, one edition set per a given make, model, and size of shoe. For example, as shown below, StockX created 250 identical Vault NFT editions depicting the Air Jordan 1 Retro High OG Patent Bred—a Nike shoe—each purportedly associated with a physical US men’s size 10 pair of the shoes held in a StockX facility referred to as the “vault.”

StockX minted NFTs in groups, each group with its own token ID and a specified number of NFTs in the group. For example, **Token ID – 4349659718886457300** (shown below) has a quantity of three (3). Each NFT in the group (*i.e.*, each NFT with this token ID) is indistinguishable from the others.



77

⁷⁵ STX0163937, Page 41.

⁷⁶ NIKE0000445, Page 1.

⁷⁷ <https://etherscan.io/nft/0x9212c3e33eafb390d0d215950bd8bea1fcc24324/4349659718886457300>.

As a practical matter the NFTs within the group are thus fungible.

78

Minting

StockX minted seven of the eight Nike Vaulted NFT editions from the Ethereum smart contract on January 14, 2022, from the Owner Address of (0x320...c147). All seven of these editions went on sale on the StockX website on January 18, 2022. StockX minted the last Nike-branded Vault NFT offered for sale—Jordan 1 Retro High OG Patent Bred (Vault NFT)—on January 25, 2022, from the Owner Address of (0x320...c147). This final edition went on sale on January 26, 2022. On January 31, 2022, StockX minted 2,000 “Jordan 11 Retro Cool Grey (Vault NFT)” tokens.⁷⁹ Although the “Jordan 11 Retro Cool Grey (Vault NFT)” tokens are visible on the blockchain⁸⁰ and StockX’s website,⁸¹ StockX does not appear to have ever offered these additional 2,000 Nike-branded Vault NFTs for sale. All nine Nike-branded Vault NFTs are currently held by the StockX Ethereum Smart Contract Owner

⁷⁸ STX0022678, Page 12.

⁷⁹ <https://etherscan.io/tx/0xeba27ac2c830aa8988d770d044cd5b68b0ff34920f825bc5eeae3089c8515e9b>; *see also* <https://rarible.com/token/0x9212c3e33eafb390d0d215950bd8bea1fcc24324:2375790845939560400?tab=history>.

⁸⁰ *Id.*

⁸¹ <https://stockx.com/aj11-retro-cool-grey-vault-nft>.

Address of (0x320...c147). There have been no new Nike Vault NFT mints since January 31, 2022, three days before Nike filed its lawsuit against StockX.⁸²

No Movement on Blockchain Since Minting

StockX minted each Vault NFT edition to the same StockX-controlled address, and since the initial mint from the smart contract, the NFTs have never moved to another address. There has been no activity on the smart contract since the last mint of ERC-1155 NFTs on July 21, 2022, as shown below. Thus, the single StockX address that minted all StockX vault NFTs still holds them. Given that there have been many known trades of StockX Vault NFTs as well as redemptions for actual products, it appears that trades and redemptions are not reflected by any actual blockchain activity. None of the sales or transfers of the Vault NFTs between StockX customers is reflected on the blockchain. Nor were redemptions of StockX collectible NFTs for the associated physical asset reflected in a return to StockX or burning (destruction) of the associated blockchain-based NFT.

Contract Info	Details
Contract Verified:	No ⁸³
Contract	0x9212c3e33eafb390d0d215950bd8bea1fcc24324 ⁸⁴
Deployer (Owner) Address	0x320c3Bc8bE1bdeBcf02b9371e57c8D5aF4E3c147
Date of Deployment:	January 7, 2022
Last Active:	July 21, 2022

Trading & Pricing

⁸⁵ However, immediately after the Vault NFTs were sold to the first purchasers, the prices of the Vault NFTs on the secondary market skyrocketed, in multiple instances to many times the price of the physical shoe depicted on the Vault NFT.

Vault NFT – Version	Initial Sale Price ⁸⁶	Secondary Highest Sale Price ⁸⁷
Nike Dunk Low Off-White Lot 50 – US M 8.5	\$ 5,000.00	\$ 7,500.00
Nike Dunk Low Retro White Black 2021 – US M 10	\$ 220.00	\$ 3,500.00
Air Jordan 4 Retro White Oreo 2021 – US M 10	\$ 400.00	\$ 2,600.00
Nike Blazer Low Sacai KAWS Neptune Blue – US M 10	\$ 120.00	\$ 3,995.00
Women Exclusive Jordan 3 Retro A Ma Manière – US W 8	\$ 450.00	\$ 5,000.00
Jordan 1 Retro High OG Patent Bred – US M 10	\$ 300.00	\$ 888.00
Nike SB Dunk Low Ben & Jerry's Chunky Dunky – US M 10**	\$ 1,250.00	\$ 5,000.00
Nike Air VaporMax 2019 Cactus Plant Flea Market**	\$ 600.00	\$ 2,200.00

⁸² On January 31, 2022, StockX minted 2,000 “Jordan 11 Retro Cool Grey (Vault NFT)” tokens. The minting event was recorded on StockX’s Vault NFT smart contract, but the tokens were not offered for sale by StockX. They are still visible on the blockchain and through third-party platforms such as Rarible. See, e.g., <https://rarible.com/token/0x9212c3e33eafb390d0d215950bd8bea1fcc24324:2375790845939560400?tab=history>.

⁸³ This requires a program to decompile the Smart Contract:

<https://library.dedaud.com/contracts/Ethereum/0x9212C3E33eafb390D0d215950BD8bea1fCC24324/decompiled?line=1>.

⁸⁴ <https://etherscan.io/address/0x9212c3e33eafb390d0d215950bd8bea1fcc24324>.

⁸⁵

⁸⁶ Initial Sale Price is the primary (first) sale from StockX to the initial buyer.

⁸⁷ Secondary Highest Sale is the highest sale price from January 18 – February 2, 2022.

This table above shows the price premium of the Nike Vault NFTs on the secondary market. The "secondary highest sales" data occurred between January 18, 2022, and February 2, 2022. Every single one of the Nike Vault NFTs sold at considerable premiums to the associated non-NFT physical shoes. These price differentials demonstrate that purchasers believed the Vault NFTs had value beyond the underlying physical item.

As discussed in greater detail later, the Nike SB Dunk Low Ben & Jerry's Chunky Dunky – US M 10 (edition of 3), and the Nike Air VaporMax 2019 Cactus Plant Flea Market US W 10 (edition of 3) initial sale data was pulled from STX0056686.⁸⁸ Based on the initial sale price, one of the three editions of each of these two Vault NFTs appears to have been sold by StockX in the first instance for a much higher price than the other two editions were sold for during the primary sale. As explained further below, this is consistent with technical problems StockX faced during and immediately after launch, which resulted in hundreds of failed transactions.

Analysis

In response to Nike's lawsuit, I understand that StockX contends that its Vault NFTs are akin to mere "claim tickets" for the associated physical products held in the "vault." The StockX Answer to First Amended Complaint states, "The Vault NFT itself has no intrinsic value beyond this process—it is effectively a claim ticket, or a 'key' to access the underlying Stored Item."⁸⁹ StockX's contention is inconsistent with its internal discussions, its public representations to consumers, and the Vault NFT design.

StockX Represented to Customers that Vault NFTs Comprise a Bundle of Physical and Digital Goods and Services, Beyond Mere "Claim Tickets"

StockX marketed and promoted Vault NFTs as more than a claim ticket. In fact, there has been no evidence uncovered showing that StockX ever used the term "claim ticket" to describe Vault NFTs to consumers until after Nike filed its Complaint. As discussed directly below, StockX promised multiple benefits for Vault NFT ownership and abruptly ceased to offer some of the more tangible perks immediately following the initiation of this litigation.

StockX also created a separate section and landing page on its website for the Vault NFTs. If these NFTs were a claim ticket for a physical shoe, there would be no need to differentiate them from the traditional (non-NFT) marketplace versions of the identical shoes. A simple checkout option to vault the shoes rather than take immediate possession of them would have been sufficient. [REDACTED]

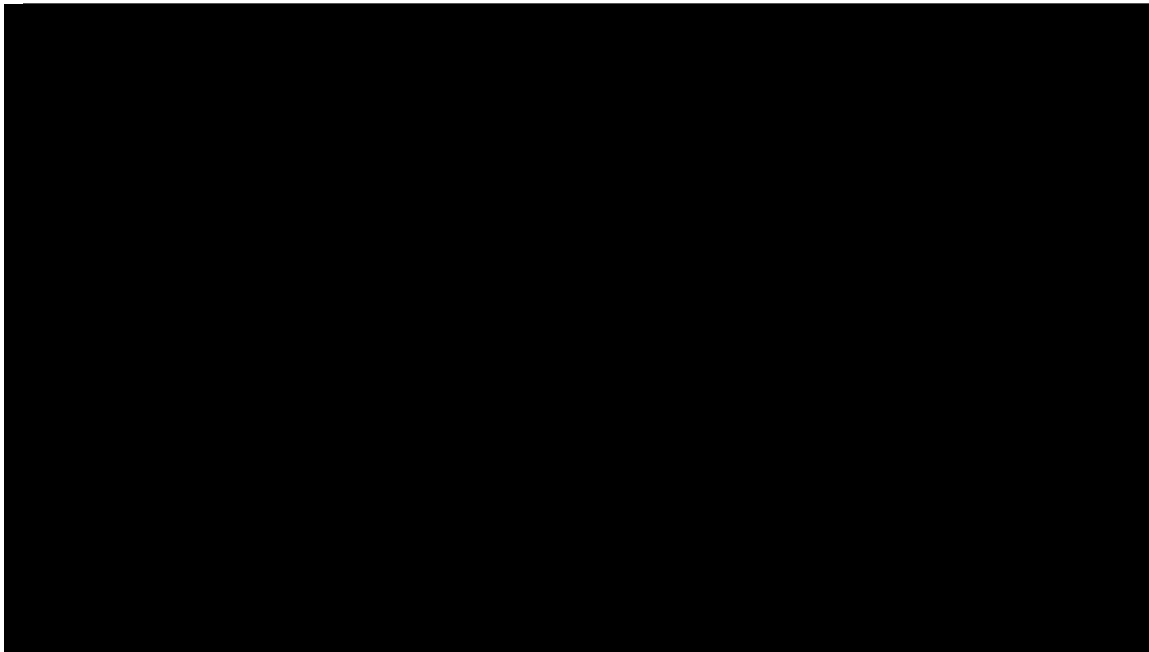
In addition, StockX sold Vault NFTs in sets of limited editions, from as many as editions of 250 to as few as editions of one. [REDACTED]

⁸⁸ STX0056686, Excel tab, _Orders_Data_Download_data.

⁸⁹ StockX Answer to First Amended Complaint (ECF No. 41), Page 5.

⁹⁰ Fenton Depo. Tr. at 124:1-11.

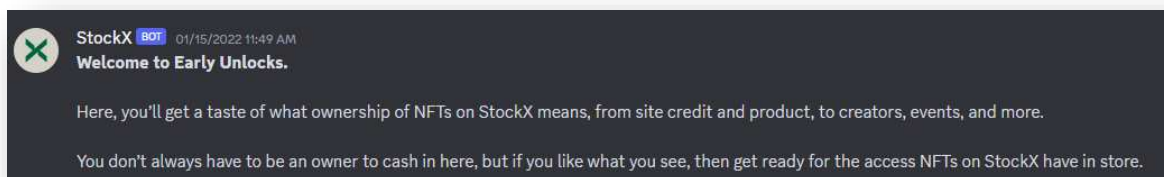
⁹¹ STX0030487, Page 19.



93

StockX Promised and Delivered Additional Benefits/Perks Beyond Ownership of Physical Goods

StockX repeatedly represented to consumers that the Vault NFTs provide associated benefits beyond those associated with the ability to trade in the NFT for a physical shoe stored in a vault. Examples of StockX touting these additional benefits can be seen all over StockX's website, in the metadata of the NFT itself, and on the StockX Discord server. For example, on January 15, 2022, three days before the Vault NFTs launched, StockX published a post under the "#🔓 | nft-unlocks" channel of their Discord server, which stated: "Welcome to Early Unlocks. Here, you'll get a taste of what ownership of NFTs on StockX means, *from site credit and product, to creators, events, and more*" (emphasis added).



94

After the first Vault NFT drop on January 18, StockX conducted a giveaway within the "#🔓 | nft-unlocks" channel for eight (8) KAWS physical collectibles. KAWS is a famous American artist and art collector. His works can be found worldwide and have sold for hundreds of thousands of dollars. This type of giveaway appeals to

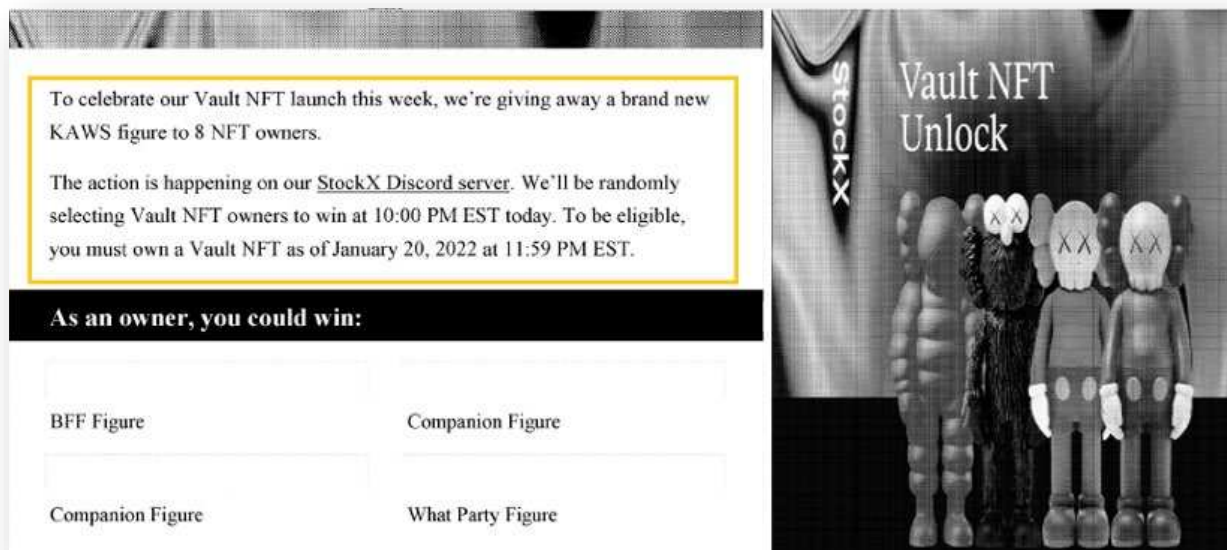
⁹² STX0018406, Page 1.

⁹³ STX0018415, Page 5.

⁹⁴ StockX Discord Server – #🔓 | nft-unlocks channel.

NFT consumers because it is a collectible from a well-known contemporary artist. These types of giveaways within a Discord server are common for NFT projects and are typically “token-gated,” meaning to get access to these types of benefits, one must be a holder of an NFT. StockX imitated this strategy to drive demand for their Vault NFTs by conducting giveaways on their exclusive holders-only “nft-unlocks” Discord channel. Because StockX did not actually issue NFTs to Vault NFT purchasers, the giveaways were not technically “token-gated”—StockX merely granted access to its exclusive holders-only Discord channels and “unlocks” to purchasers who provided proof of purchase to StockX’s Discord moderators.⁹⁵

StockX also sent an email detailing the KAWS collectible giveaway within the Discord server:



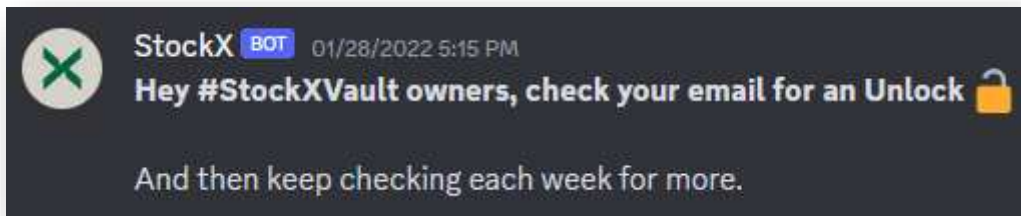
97

The final post on the “#🔒 | nft-unlocks” channel is dated January 28, 2022, and instructs “#StockXVault Owners” to check their email for another “unlock” and to continue to check their emails weekly for additional weekly “unlocks”:

⁹⁵ StockX Discord Server – # x-nft-owner channel.

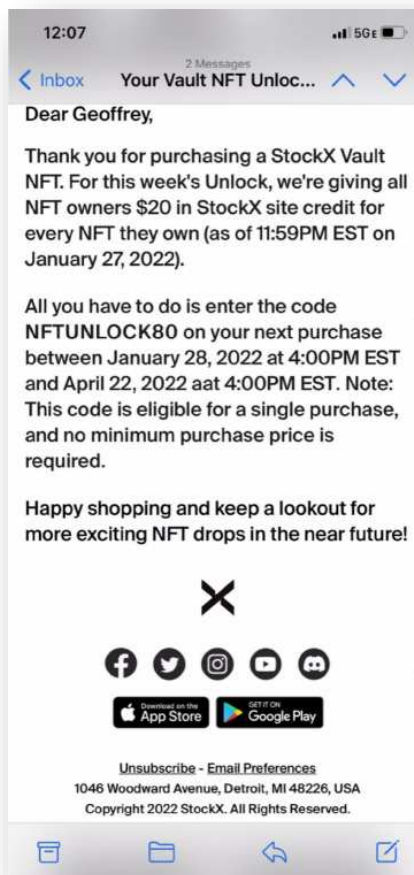
⁹⁶ STX0040143, Pages 1, 2.

⁹⁷ STX0040143, Pages 1, 2. For demonstratives purposes, this image was compiled as a composite image. Please refer to the link or document name to view the original.



98

The “unlock” StockX emailed to Vault NFT owners at the end of January 2022 appears to have been a \$20.00 StockX site credit.⁹⁹ Per the email StockX sent to Vault NFT owners, each Vault NFT owner would receive “\$20 in site credit for every NFT they own.”¹⁰⁰ The email also instructed recipients to “keep a lookout for more exciting NFT drops in the near future!”:



101

⁹⁸ StockX Discord Server – #🗝️ | nft-unlocks channel; <https://stockx.com/kaws-bff-open-edition-vinyl-black>.

⁹⁹ STX0443828; *see also* STX0443829; STX0443343 at Page 187.

¹⁰⁰ STX0443828, Page 1.

¹⁰¹ *Id.*

StockX also memorialized its guarantee of exclusive benefits to Vault NFT owners in the Vault NFT metadata accessible on the Ethereum blockchain. For each of the initial eight Vault NFTs sold by StockX at launch, the smart contract and NFT minting information together include a link to a JSON¹⁰² text file that describes generically the make, model, and size of shoe to which the NFT relates, and contains the following representation: “As an NFT owner, *you will be granted exclusive access to StockX benefits, promotions, experiences, and rewards*” (emphasis added).¹⁰³

Beyond Vault NFT metadata, StockX’s social media channels, and direct customer emails, StockX repeatedly highlighted exclusive benefits of Vault NFT ownership throughout its website. As shown above, the original version of the “roadmap” StockX published on the “Collect What’s Next” landing page represented that “[a]ll holders will be eligible for exclusive StockX benefits”:



104

The January 18, 2022 version of the “StockX Terms and Conditions of Use,” also provide that “the holders of NFTs may be entitled to obtain certain products, benefits or engage in certain experiences, such as unlocking a prize or entry into an exclusive sale”¹⁰⁵

The StockX Help Center webpage titled “What are the rewards and benefits of owning NFTs on StockX” (Version 04/14/22) states: “owners of Vault NFTs may be eligible for certain incentives and rewards that StockX provides to its users from time to time for using StockX services.”¹⁰⁶ These incentives and rewards are not related to the ownership of the underlying physical good but rather are incentives and rewards specifically related to ownership of the NFT.

¹⁰² A JSON file is a JavaScript Object Notation (JSON) format file that stores data structures and objects.

¹⁰³ NIKE00005663, Page 2.

¹⁰⁴ NIKE0000055, Page 3.

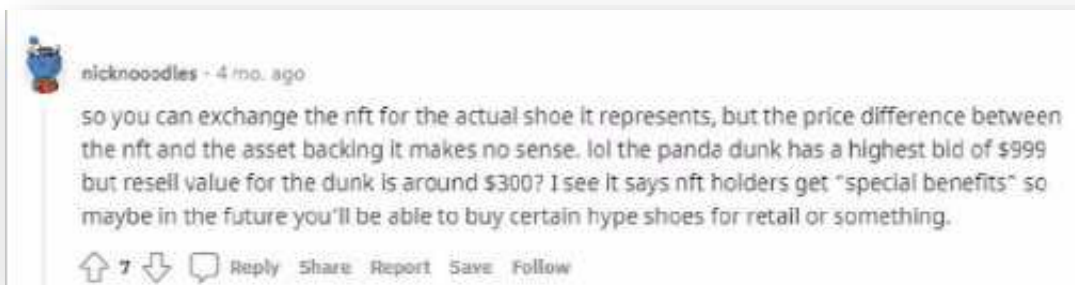
¹⁰⁵ NIKE0000253, Page 7.

¹⁰⁶ What are the rewards and benefits of owning NFTs on StockX?, <https://stockx.com/help/articles/What-are-the-rewards-and-benefits-of-owning-NFTs-on-StockX>.

nd

The above public representations [REDACTED] about the benefits of Vault NFT ownership demonstrate how StockX understood and communicated the fact that the purchase of a Vault NFT conveys a unique benefit, such as access to future exclusive sales or giveaways, that buying a regular physical item does not provide. This alone undermines StockX's contention that Vault NFTs constitute mere "claim tickets" for associated physical products, as these public statements clearly represent that Vault NFT ownership confers much more than the option to take possession of the vaulted physical product.

Consumers also appear to have understood StockX's representations to mean that Vault NFT ownership conferred exclusive benefits, and that the provision of such exclusive benefits accounted for the difference in price between the Vault NFT and physical shoes. For example, Reddit user "nicknoodles" posted the following message in a r/Sneakers subreddit about the Vault NFTs:



108

Another Reddit user similarly zeroed in on StockX's representations of "exclusive benefits" for Vault NFT ownership and identified it as a possible explanation for the value of the Vault NFT relative to the physical shoes:



109

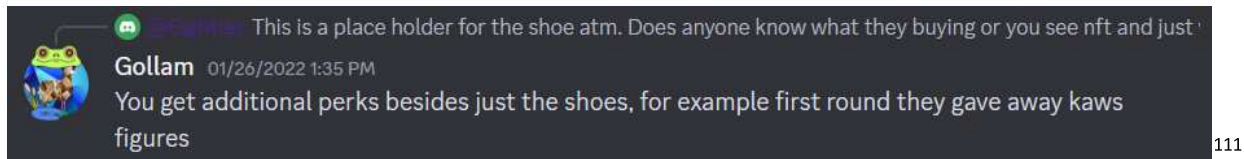
In StockX's own Discord server, consumers similarly expressed their understanding that Vault NFT ownership conferred certain exclusive benefits, as StockX had represented. For example, on January 26, 2022, StockX

¹⁰⁷ STX0163937, Page 22.

¹⁰⁸ NIKE0006015, Page 8.

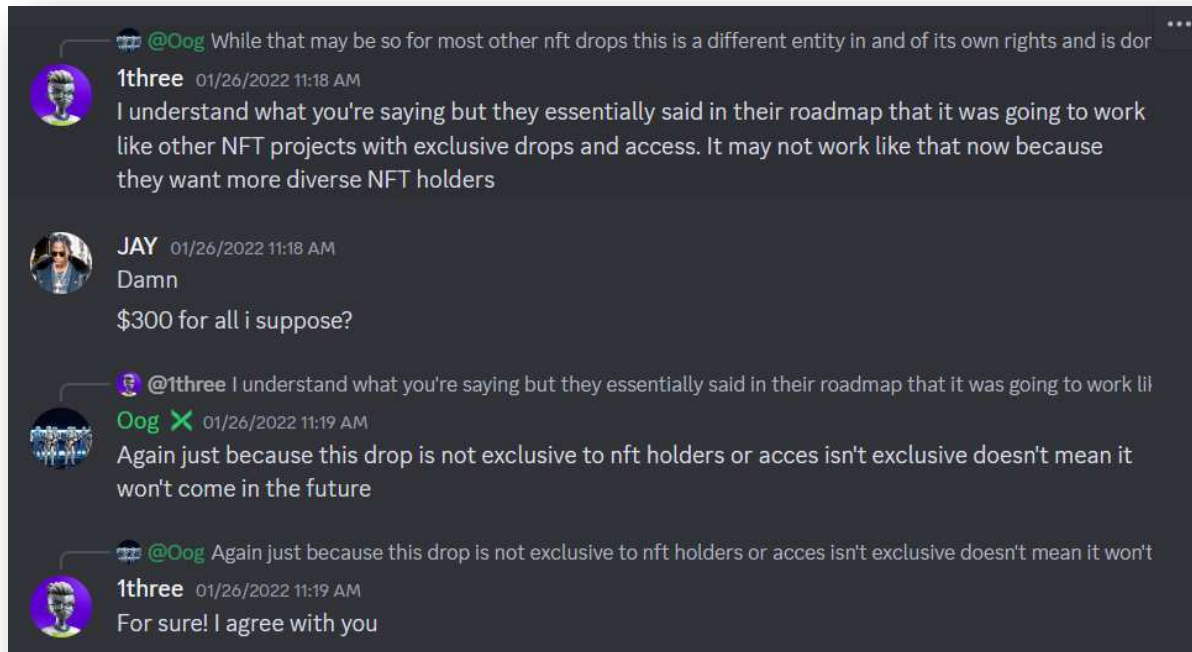
¹⁰⁹ NIKE0006124, Page 8.

Discord user “Gollam” wrote in response to a discussion about the Vault NFTs on the “nft-chatter” channel: “You get additional perks besides just the shoes, for example first round they gave away kaws figures.”¹¹⁰



111

Also on January 26, 2022, StockX Discord users discussed in the “nft-chatter” channel whether the exclusive benefits StockX had promised to Vault NFT holders would include exclusive access to future Vault NFT drops:



112

StockX Vault NFT holders also voiced their frustration with the exclusive benefits StockX actually delivered, as well as StockX’s prompt cessation of these benefits as originally promised. Despite prominently touting the “exclusive benefits” that would accrue to each Vault NFT holder, StockX abruptly abandoned its original “unlocks” strategy immediately following the filing of Nike’s complaint and replaced it with a giveaway model that benefitted only one of thousands of Vault NFT holders. For example, on April 14, 2022, Discord user “lukevan7” wrote the following in the Vault NFT owner-only “x-nft-owner” channel¹¹³:

¹¹⁰ StockX Discord “nft-chatter” Channel.

¹¹¹ Id.

¹¹² StockX Discord “nft-chatter” Channel.

¹¹³ Access to the “x-nft-owner” Channel on StockX’s Discord server is restricted to only those users who have verified with StockX that they own a Vault NFT.



lukevan7

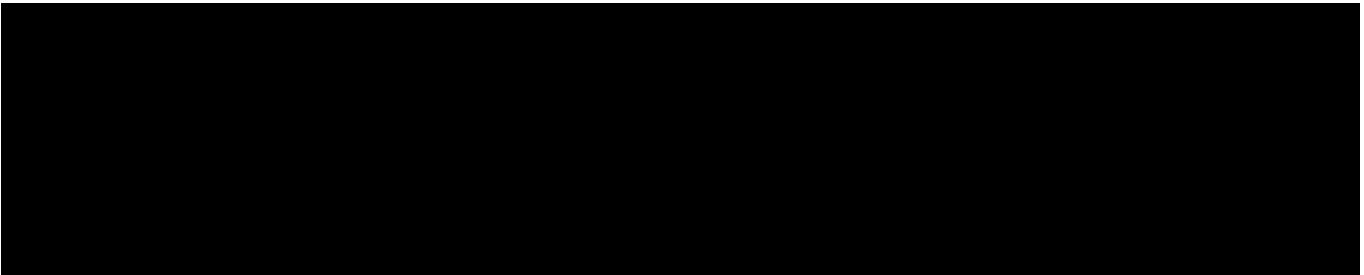


04/14/2022 7:39 PM

I don't mind the item choices but there's no perks/benefits of buying and holding the NFT. There was initially with the "Friday unlocks" that benefitted every single NFT holder but those quickly disappeared and were replaced with weekly site credit giveaways that benefit 1 out of thousands of NFT holders. I think that's where they are really missing out due to a disconnect with their consumer (which are usually StockX dedicated users like myself) and why we are seeing barely any hype/after market value which is what StockX is about

114

As the above examples demonstrate, StockX actually delivered benefits to Vault NFT holders, such as the January 21, 2022 KAWS figure giveaway and the January 28, 2022 \$20 site credit "unlock."¹¹⁵ Consumers and actual Vault NFT holders also understood StockX's representations to mean that ownership of a Vault NFT confers additional exclusive perks and benefits beyond mere ownership of an associated physical item. Indeed, when StockX stopped providing regular "unlocks" to Vault NFT holders, they complained on StockX's Discord server, as the above message demonstrates.



¹¹⁴ StockX Discord "x-nft-owner" Channel.

¹¹⁵ STX0040143; STX0443828; STX0039474; STX0039475.

[REDACTED]

116

[REDACTED]

[REDACTED]

117

[REDACTED]

¹¹⁶ STX0039474; STX0039475.

¹¹⁷ STX0031290, Page 1.



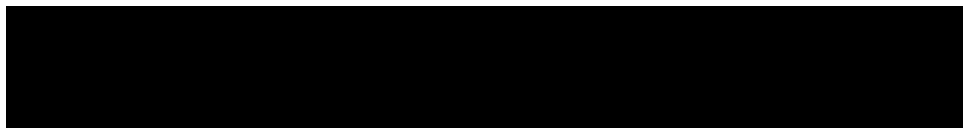
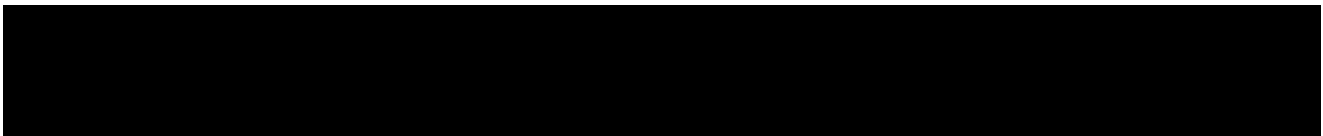
118

Following the initiation of the present litigation, however, StockX's delivery of Vault NFT unlocks greatly diminished and eventually stopped completely.

In addition to the advertised "unlocks" and other promised perks, Vault NFT owners also receive two distinct services from StockX—the storage service defined in the Vault Terms as the "Vault Services," and a novel and enhanced trading experience. As discussed above, the Vault Terms provide that upon purchase of a Vault NFT, the purchaser "automatically make[s] use the Vault Services," which StockX defines as the storage of the physical item associated with a Vault NFT in a StockX facility.¹¹⁹ Throughout its website and promotional materials, StockX prominently highlighted its purported storage capabilities. For example, on the "Collect What's Next" landing page, StockX represented that each physical item associated with a Vault NFT is "stored in our brand new, climate-controlled high-security vaults inside StockX facilities."¹²⁰

StockX also touted the new, purportedly more efficient digital trading method as an additional benefit it provides to consumers via the Vault NFTs. For example, on January 18, 2022, StockX published to the "Newsroom" section of its website a letter from its CEO, Scott Cutler, in which Mr. Cutler describes the Vault NFT offering as an "experience where our customers can invest in NFTs tied to physical products and trade them instantly with lower fees."¹²¹ Mr. Cutler's letter goes on to further explain the enhanced trading service StockX provides via the Vault NFTs:

By bridging the physical and digital worlds, we're able to provide a more efficient trading experience anchored by lower costs and storage capabilities — a buyer no longer has to wait several days before they can resell a product, and they don't have to pay the fees associated with multiple legs of shipping and physical authentication.¹²²



¹¹⁸ STX0022669, Page 2.

¹¹⁹ *Supra* Vault NFT Terms.

¹²⁰ NIKE0000055, Page 2.

¹²¹ StockX Launches Vault NFTs, <https://stockx.com/about/stockx-launches-vault-nfts/>.

¹²² *Id.*

124

125

StockX Consistently Represented the Vault NFTs as “NFTs” or “Digital Assets,” Not “Claim Tickets,” and Intentionally Used NFT and Web3 Terms to Refer to the Vault NFT Offerings

As described and exemplified above, from the Vault NFT PDPs to the StockX User Portfolio to Discord, StockX consistently and prominently referred to the Vault NFTs as “NFTs,” digital assets,” and “tokens.”¹²⁶ Nowhere on StockX’s website, social media, or marketing materials did it ever refer to the Vault NFTs as “claim tickets.”

This trend carried through Vault NFT clickwrap disclosures presented to consumers at time of purchase and email receipts StockX sent to consumers upon purchase of a Vault NFT. Upon purchase, StockX users had to affirmatively tick three boxes, each of which explicitly referred to the Vault NFTs as NFTs:

¹²³ STX0043213, Page 1.

¹²⁴ STX0163937, Page 51.

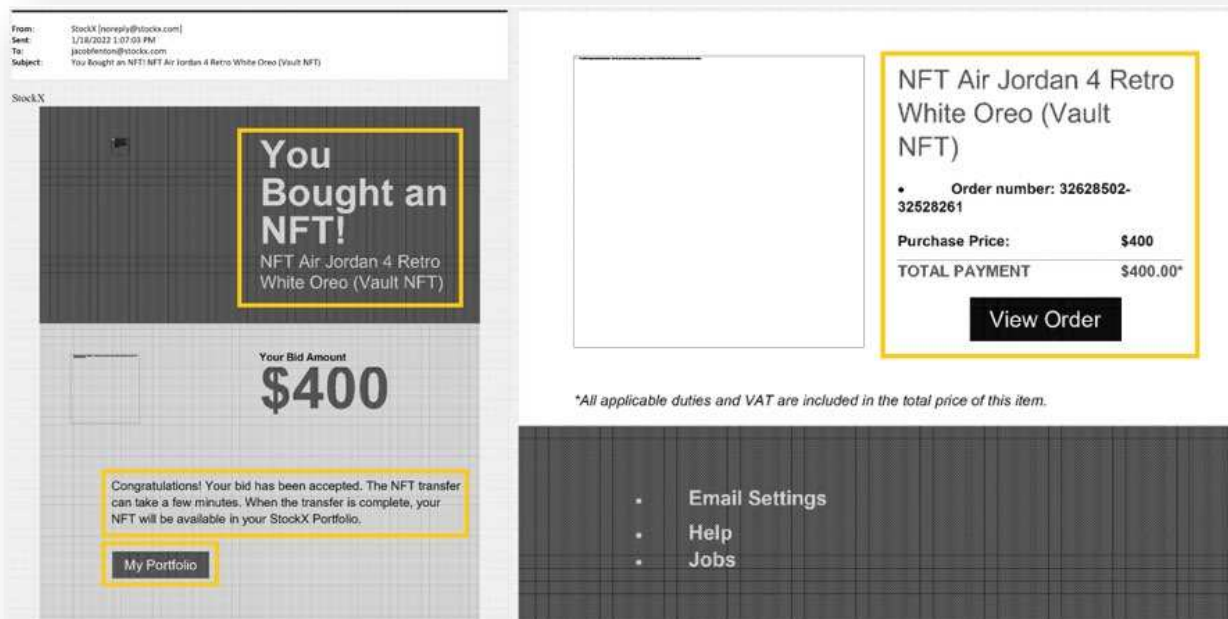
¹²⁵ STX0019820, Page 10.

¹²⁶ See, e.g., *supra* Vault NFT Launch & Promotion, *passim*.

- ☒ I understand that NFTs are speculative. There are no returns or cancellations.
- ☒ I understand this NFT can only be traded on StockX.
- ☒ I understand that redemption of the physical item tied to this NFT is not available until later in Q1 2022.

127

When a consumer made a purchase of a Vault NFT on StockX, StockX's confirmation to those customers stated in bold "You Bought an NFT!":

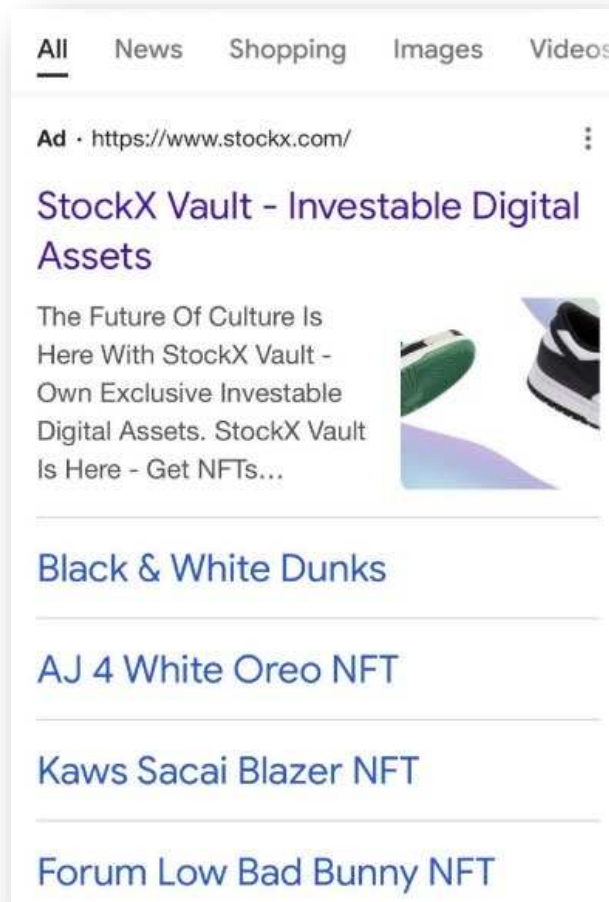


128

StockX also paid for Google ads that promoted "StockX Vault – Investable Digital Assets" and referred to several "Nike" NFTs:

¹²⁷ STX0443799; *see also* STX0443801; STX0443802.

¹²⁸ STX0104547, Pages 1, 2. For demonstrative purposes, this image was compiled as a composite image. Please refer to the link or document name to view the original.



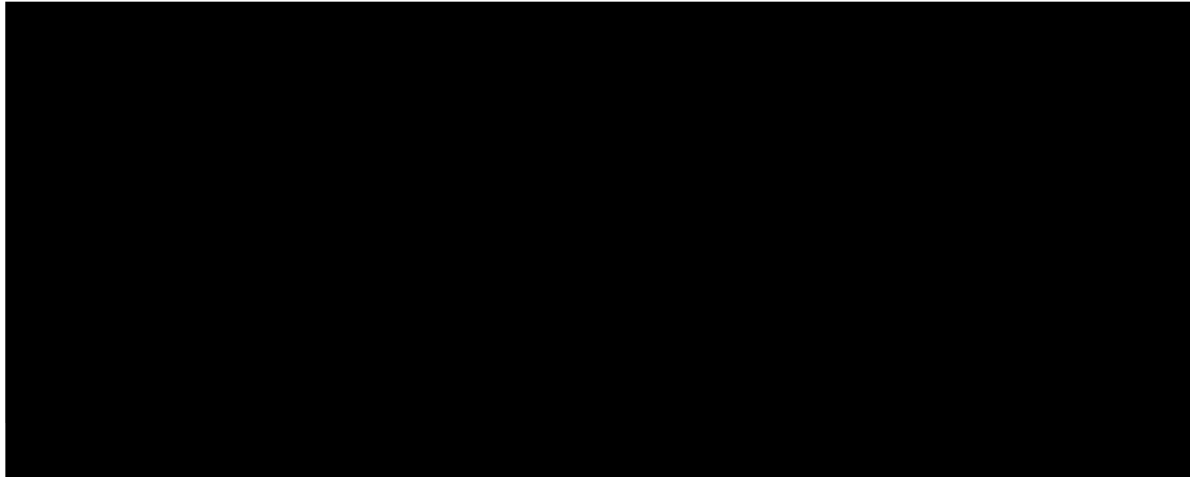
129

¹²⁹ NIKE0000451, Page 1.

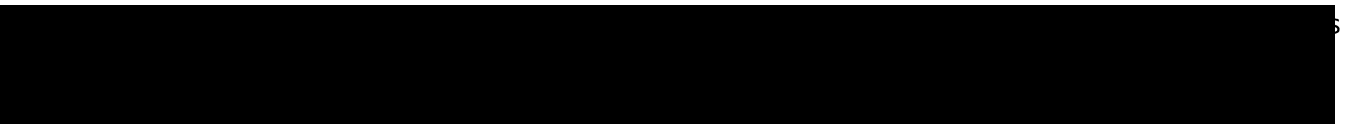
¹³⁰ STX0014276, *passim*.

¹³¹ *Id.* at Page 2.

¹³² *Id.*

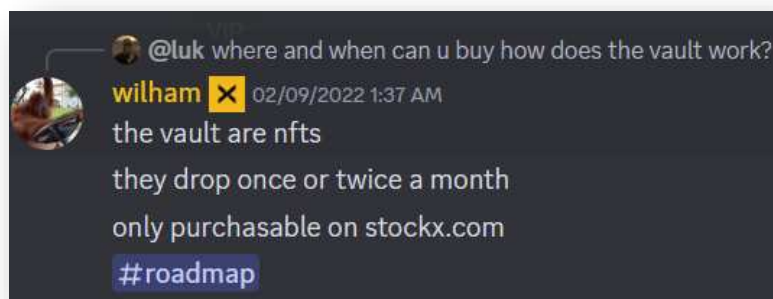


133



All of this is consistent with NFT project marketing customs and conventions.

offerings
Social media posts about the Vault NFTs indicate that consumers believed the Vault NFTs to be as StockX advertised, *i.e.*, NFTs. For example, on February 9, 2022, StockX Discord user “wilham” published the following in response to another user’s question about where and when one can buy Vault NFTs:



136

Images

The Nike Vault NFTs are presented in ways intended to show value independent and distinct from the associated physical shoes stored in the “Vault.” The NFTs were designed with display in mind. The NFTs were designed with artists, photographers, and others who helped create images that individuals would be proud to display. In the

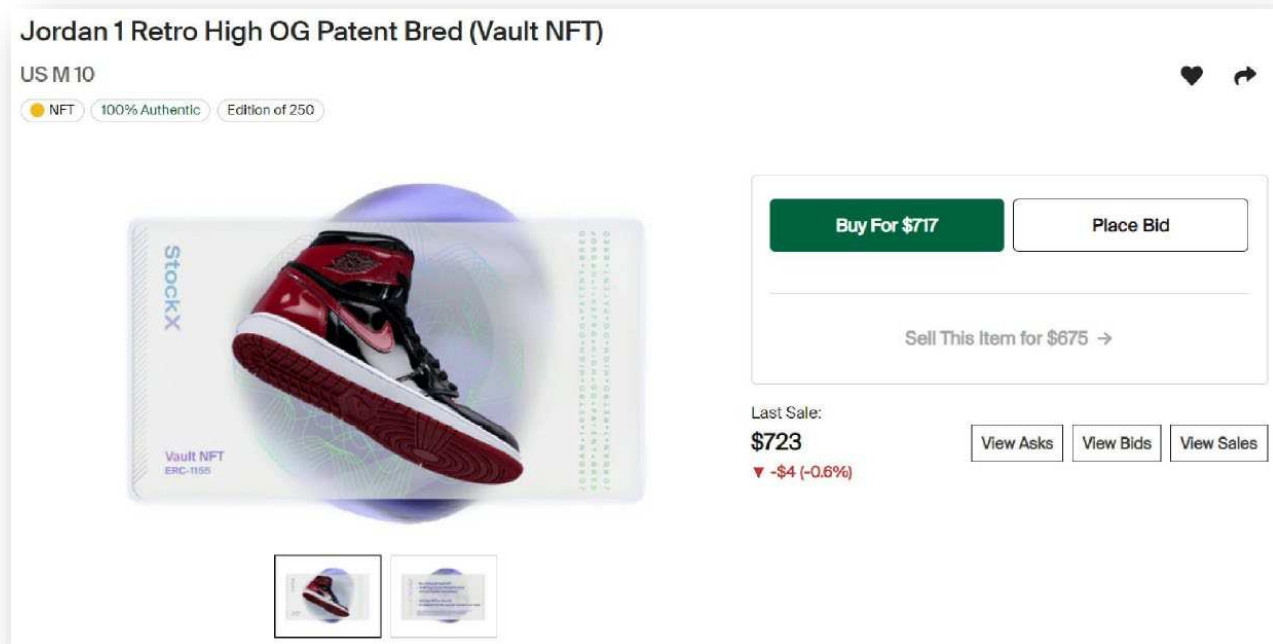
¹³³ Id. at Page 3.

¹³⁴ Id. at Pages 3, 4.

¹³⁵ See *supra* Vault NFT Launch & Promotion.

¹³⁶ StockX Discord “sneakers” channel.

StockX used high-end graphics and leveraged Nike’s iconic shoe designs and famous trademarks, such as the Nike Swoosh and Jordan Jumpman, to appeal to NFT consumers. This is a typical strategy that a brand owner would use to leverage its products, brands, and trademarks in the NFT space. The image below illustrates StockX’s leverage of Nike and Jordan brands for this same purpose.



139

Appealing images, including famous brand logos and names, are a core part of digital collectible NFT projects, and here—as StockX stated in internal documents—these images were designed with aesthetic appeal in mind. They do not identify or depict the condition of a specific pair of shoes (apart from the generic picture) tied to the NFT as StockX represented. Instead, the design process and resulting Vault NFT imagery is consistent with digital collectible or art NFT projects.

¹³⁷ STX0163937, Page 15.

¹³⁸ Id. at Page 20.

¹³⁹ NIKE0000445, Page 1.

[REDACTED] This also undermines StockX's contention that the Vault NFTs are merely a claim ticket.

Major brands have similarly incorporated their trademarks and products into NFT offerings, often created and released in partnership with an NFT company. One example is the NFT company BlockBar, which partnered with luxury liquor and wine brands to bring access to unique and rare bottles of liquor and wine. BlockBar has established partnerships with 1800 Tequila, Dewars, Glenfiddich, and Penfold's, to name a few.¹⁴¹ Each limited-edition Blockbar NFT represents ownership of a rare bottle or barrel of liquor or wine stored in a secure facility and features an associated 3D animation of the bottle or barrel.

Another example is Major League Baseball's ("MLB") partnership with the NFT digital collectible company Candy Digital.¹⁴² Through this partnership, Candy offers NFT digital collectibles, such as digital trading cards of current and past MLB players, "MLB Plays of the Week" highlight video clips, and other MLB-approved digital memorabilia. An example of a major fashion company partnering with an NFT company is Gucci's partnership with 10KTF.¹⁴³ Gucci's creative director, Alessandro Michele, works with 10KTF's digital artist, Wagmi-san, to create digital "Gucci curated"—outfits for holders of certain PFP¹⁴⁴ NFT collections (*i.e.*, Bored Ape Yacht Club, Wolf Game, Pudgy Penguins). These partnerships demonstrate major brands' expansion into and investment in the NFT space and provide consumers with confidence that the NFTs bearing these brands' trademarks and products are authorized by and legitimately connected to these brands.

Editions and Scarcity

The StockX Vault NFT images contain "Edition" information. Employing fixed edition counts is a common strategy to market NFTs, which NFT creators and issuers often do to create the impression of scarcity and exclusivity, which, in turn, can increase the perceived value of the NFTs. By limiting the number of copies available, collectors may be more motivated to acquire the NFT as they may view it as rare or unique.



145

StockX's addition of this type of language and visual display to each Vault NFT PDP image creates a sense of artificial scarcity, [REDACTED]

¹⁴⁰ STX0060150, Excel tab, sheet1.

¹⁴¹ <https://blockbar.com/brands>.

¹⁴² David Adler, *The newest MLB digital collectibles for 2023*, mlb.com, April 10, 2023, available at <https://www.mlb.com/news/mlb-candy-offering-new-digital-collectibles-for-2023>.

¹⁴³ 10KTF Gucci Grail, <https://www.gucci.com/us/en/st/stories/article/10ktf-gucci-grail>; 10KTK Gucci Grail, <https://opensea.io/collection/10ktf-gucci-grail>.

¹⁴⁴ The "PFP" initialism originally referred to "picture-for-proof," a method of verifying one's identity or NFT ownership on social media but has since evolved to also refer to "profile picture" or "profile pic," in light of the common practice of using the artwork of an NFT one owns as one's social media profile picture or avatar.

¹⁴⁵ <https://stockx.com/dunk-low-off-white-lot-50-vault-nft>.

[REDACTED]

[REDACTED]

147

[REDACTED]

[REDACTED]

148

¹⁴⁶ STX0545122, Pages 3, 4.

¹⁴⁷ STX0031290, Page 1.

¹⁴⁸ STX0022669, Page 1.

in

151

The fixed edition counts and the resulting artificial scarcity communicated to the market are entirely StockX's invention, based on its ability to purchase shoes off of its marketplace to place in the "vault" by the desired Vault NFT launch date and its capacity to store the shoes.

Although only a finite number of Nike shoes exist, the added degree of artificial scarcity StockX imposed on the market for its Vault NFTs was a product of StockX's decision to market Vault NFTs associated with highly sought-after shoes and its ability to acquire and store the associated physical shoes within an arbitrarily selected period of time.

¹⁵⁰ STX0022669, Page 1.

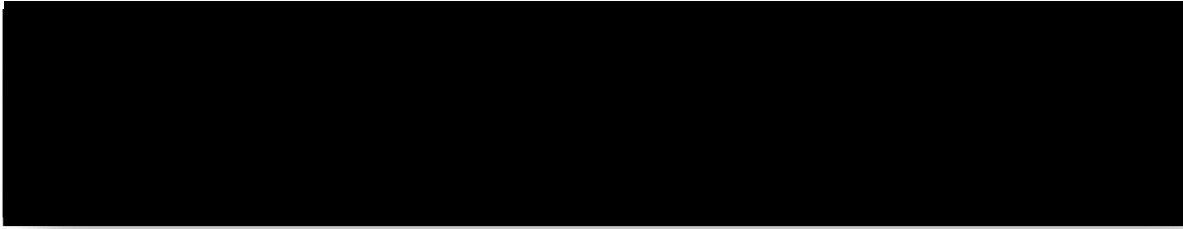
¹⁵¹ Id.

¹⁵² STX0163937, Page 14.

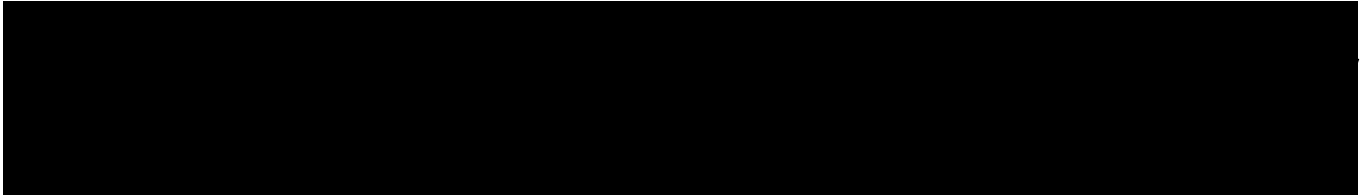
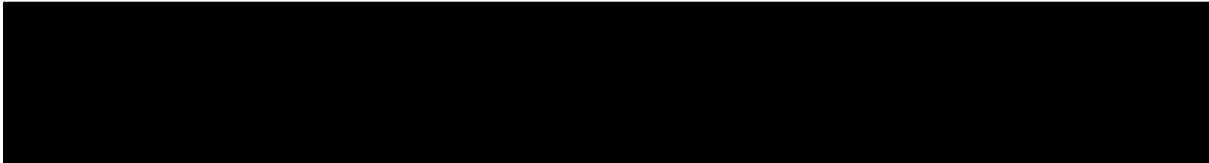
¹⁵³ Id.

¹⁵⁴ Thomas Tr. at 43:21-44:10.

¹⁵⁵ Id. at 78:14-17.



156

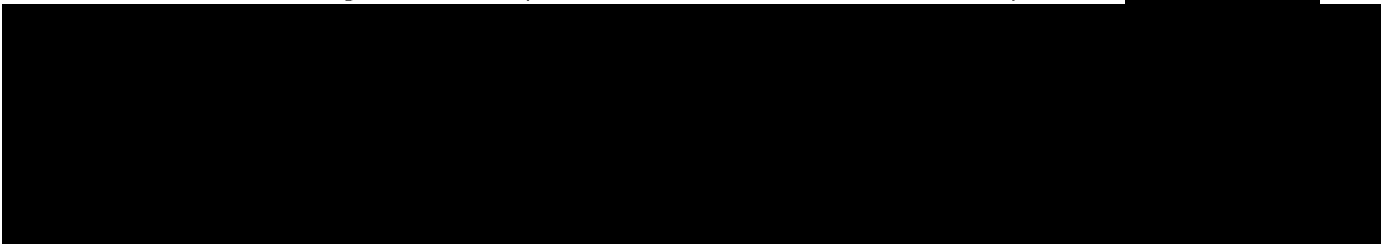
157

StockX's Use of Blockchain is Pretextual and Falls Short of Both its Own Representations and Industry Standards

Blockchain networks like Ethereum can provide confidentiality of ownership, integrity (validating data has not been altered), and availability (always keeping the network up). StockX represents to the consuming public that “[e]ach Vault NFT is backed by a physical item held in StockX’s custody, tied directly one to one via the blockchain.”¹⁵⁶ Contrary to StockX’s representations there and in its Answer to Nike’s Amended Complaint, StockX’s Vault NFTs are *not* “traded on a blockchain, which permanently and publicly stores records of each NFT transfer, making the process a transparent and secure way to track ownership of physical items.”¹⁵⁹ Instead, trading of the Vault NFTs depends solely on StockX’s internal, off-chain infrastructure to establish ownership within the StockX marketplace, which leaves the purported underlying characteristics of the Vault NFTs in question.

Trading and Ownership of Vault NFTs is Tracked and Managed Off-Chain

Rather than track the trading and ownership of Vault NFTs on the blockchain as it represents,



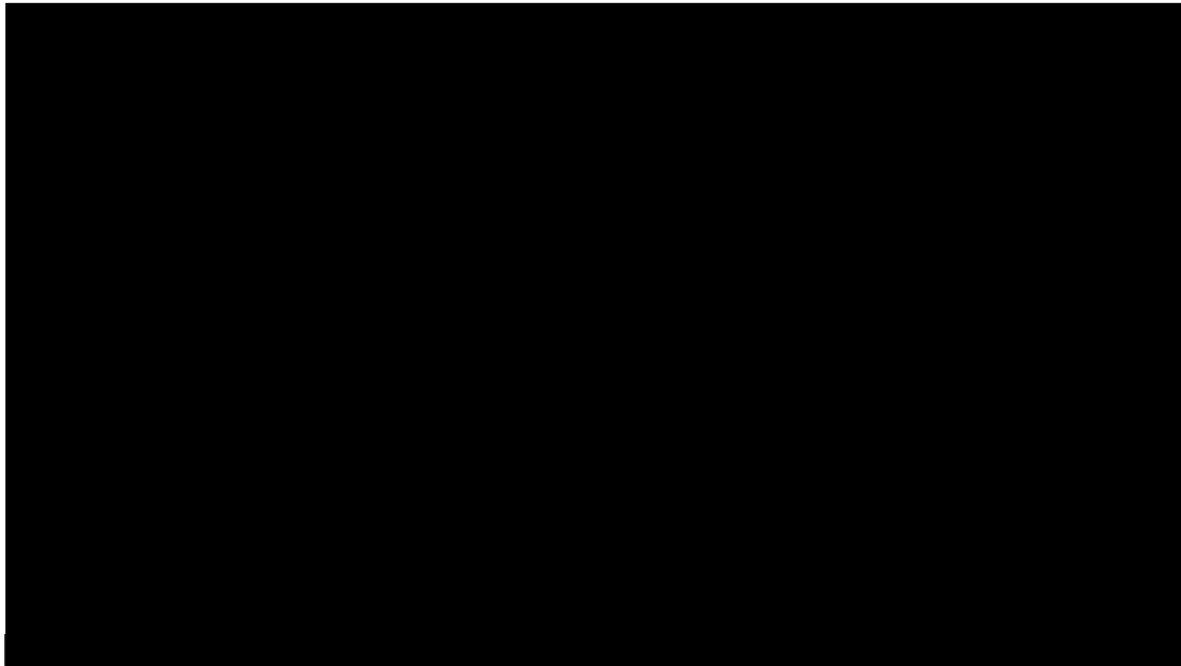
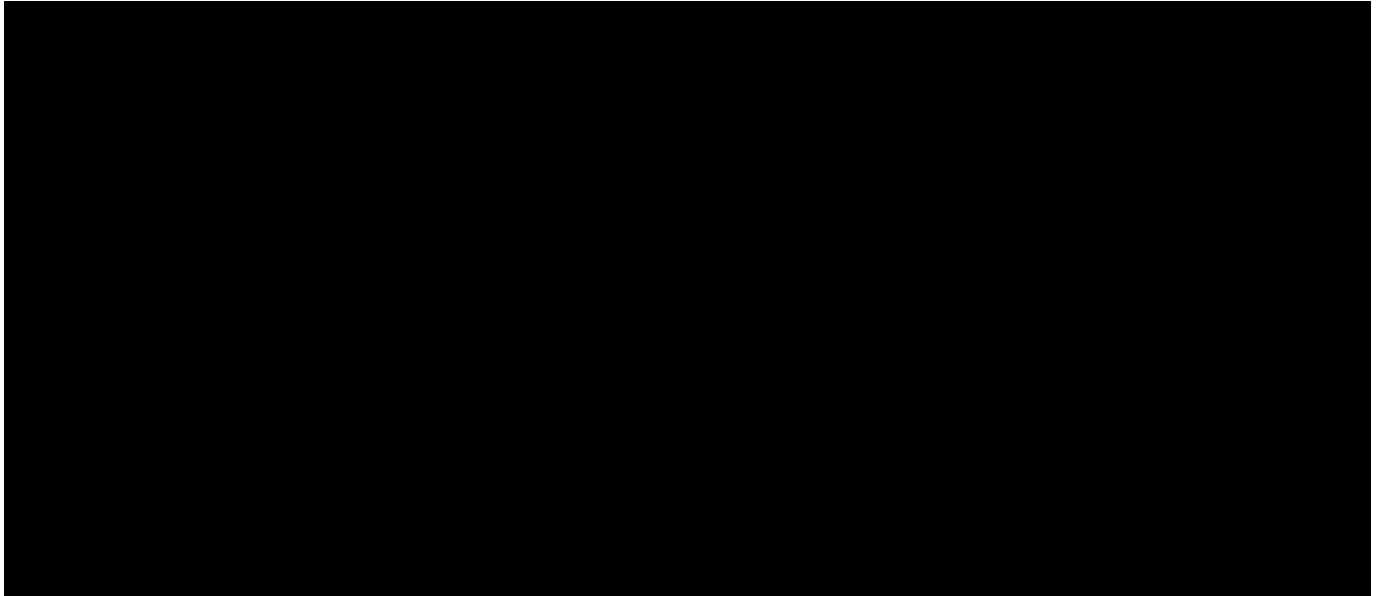
¹⁵⁶ STX0022669, Page 1.

¹⁵⁷ STX0163937, Page 42.

¹⁵⁸ What are Vault NFTs? <https://stockx.com/help/articles/What-are-Vault-NFTs>.

¹⁵⁹ StockX Answer to First Amended Complaint (ECF No. 41), Page 4.

¹⁶⁰ Thomas Depo. Tr. at 53:19-55:2.

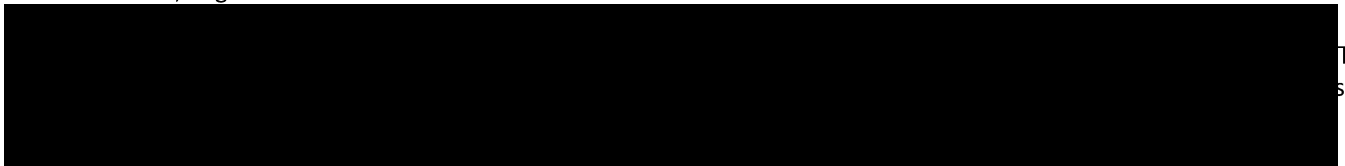


167

¹⁶¹ Malik Depo. Tr. at 160:5-19.

¹⁶² STX0138015, Page 6.

¹⁶³ STX0453911, Page 6.



¹⁶⁵ STX0163937, Page 52.

¹⁶⁶ STX0063639, Page 25.

¹⁶⁷ STX0040142, Page 1.

[REDACTED]

Because there is no meaningful connection between these internal StockX systems and the Ethereum Smart Contract, there is no on-chain activity to reflect any of the trades that occur on StockX's Vault NFT marketplace. Moreover, because StockX does not actually use the blockchain to track trading and ownership of the Vault NFTs, the Vault NFTs lack blockchain-based attributes that one would expect when purchasing an NFT, and, as discussed below, that StockX explicitly touted in its promotional materials and falsely represented to the Court.

When Vault NFTs Were Purchased, Resold, and Redeemed No Transfer Occurred of the Actual Blockchain NFTs, Which Have Sat in the Same StockX-Controlled Wallet Address Since Minting.

As outlined above, when Vault NFTs were purchased, resold, and/or redeemed for the associated physical product, nothing happened on the blockchain. The blockchain-based NFTs remained in the same StockX-controlled address into which they were minted. Indeed, according to StockX, trading and transfer of ownership is all done within StockX's internal records, and not recorded (and therefore unable to be verified) on the blockchain. Our analysis confirms this, as initial purchase, ownership, transfer, and redemption are not recorded in any way on the blockchain. There is nothing in the StockX smart contract that indicates that any of the NFTs have been burned upon redemption of the associated physical item. Ultimately, this renders StockX's purported "use" of blockchain technology wholly pretextual and practically irrelevant to its Vault NFT offerings. Jacob Fenton confirmed this in an internal email dated March 13, 2022, stating that the "NFT aspect" of the Vault NFTs "is a marketing gimmick at this point."¹⁶⁹

StockX's Use of NFT Language Conveys Meaningful Connection to Actual Blockchain-Based NFT; Here the Connection was Superficial and Pretextual. The Vault NFTs Also Lack Benefits of NFT Technology: Independent Transferability, Verification of Ownership, and Security.

StockX touted the capabilities of NFTs and blockchain technology on its website since the date of their first Vault NFT drop. However, the way StockX communicated its views on blockchain technology and the ERC-1155 smart contract deployed on Ethereum falsely conveys a connection between the Ethereum blockchain and the Vault NFTs that does not exist. For example, in his letter announcing the Vault NFT launch, StockX CEO Scott Cutler explained "Vault NFTs are minted under custodial authority as ERC-1155 tokens on the Ethereum blockchain to reduce transaction fees, minimize environmental impacts, and create provenance."¹⁷⁰ StockX similarly states in its Answer to Nike's Amended Complaint that "NFTs are traded on a blockchain, which permanently and publicly stores records of each NFT transfer, making the process a transparent and secure way to track ownership of physical items."¹⁷¹ Neither of these statements are true, however, with respect to the actual blockchain functionality of the StockX Vault NFT offering. [REDACTED]

[REDACTED]

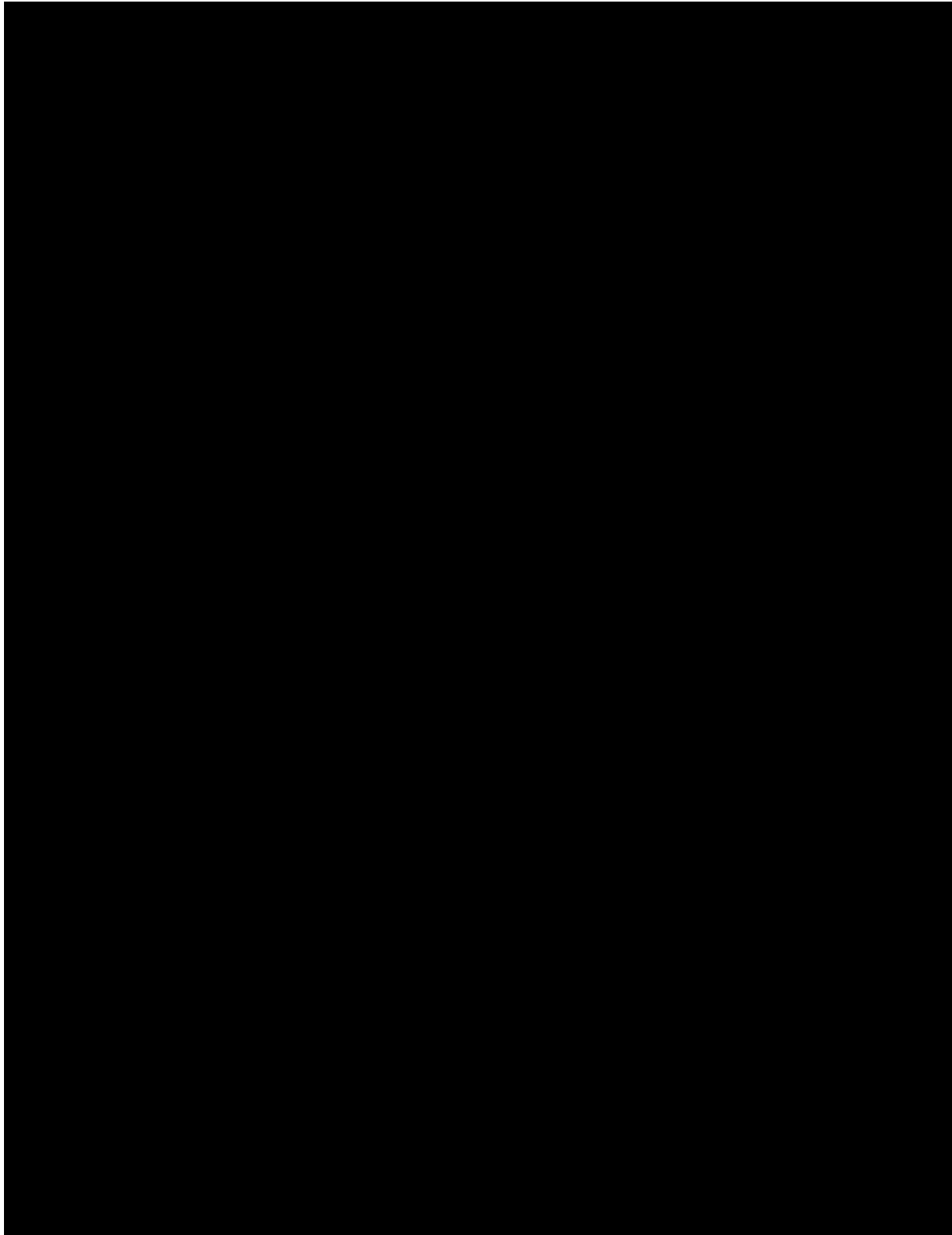
[REDACTED]

¹⁶⁸ STX0022553, Page 3.

¹⁶⁹ STX0043213, Page 1.

¹⁷⁰ NIKE0000391, Page 2.

¹⁷¹ StockX Answer to First Amended Complaint (ECF No. 41), Page 4.



172

¹⁷² STX0445340, Pages 7-10. For demonstrative purposes, these Slack thread excerpts were compiled as a composite image. Please refer to the link or document name to view the original.

[REDACTED]

As a result, Vault NFT holders lack many benefits of actual blockchain-based NFT ownership, including the ability to confirm and prove ownership publicly on an immutable public ledger (*i.e.*, a blockchain), the ability to view and confirm prior transfers, and the ability to independently hold and transfer the NFTs. StockX's use of the term "NFT" and related terms (e.g., "ERC-1155," "Ethereum," etc.) thus conveys a use of blockchain that does not exist here in any meaningful way. For these reasons, the connection of StockX Vault NFTs to the blockchain was superficial.

Nothing in Blockchain NFT Indicates Tie to Specific Collectible

StockX states on its website that "[e]ach Vault NFT is backed by a physical item held in StockX's custody, tied directly one to one via the blockchain" ¹⁷³ StockX's website also states that "each Vault NFT edition is uniquely serialized to an authenticated product in our Vault." ¹⁷⁴ Based on review of the smart contract and other blockchain elements, this is not accurate. The StockX Vault NFTs do not map to a specific item either in the smart contract or anywhere else on the blockchain. While the smart contract and NFT minting information together include a link to a JSON ¹⁷⁵ text file that describes generically the make, model, and size of shoe to which the NFT relates, nothing on the blockchain ties each NFT to a specific physical item, as represented above. The multi-edition Vault NFTs that are associated with more than one pair of shoes have no visible or comprehensible way to discern the connection between the Vault NFT edition and the corresponding unique physically stored item. After a customer purchases a Vault NFT, StockX uses only its own internal databases to track the ownership of the NFT and any connection to the associated physical item stored in the vault. Beyond a "pseudo-token" ¹⁷⁶ displayed in the NFT tab of the StockX user portfolio, StockX does not provide any information to a customer concerning any connection to a specific pair of shoes held in the StockX Vault. Instead, StockX provides consumers with generalized sales data for a particular Vault NFT. For example, the "StockX Vault Nike Dunk Low Retro White Black - US M 10" PDP contains a "View Sales" button that when clicked shows date, time, and sale price of the most recent sales of the Vault NFT. This data table does not indicate *which* specific edition of the Vault NFT and *which* associated physical item were sold, nor does it identify the parties to the transaction, even by some anonymous identifier.

¹⁷³ What are Vault NFTs?, <https://stockx.com/help/articles/What-are-Vault-NFTs>.

¹⁷⁴ StockX Launches Vault NFTs, <https://stockx.com/about/stockx-launches-vault-nfts/>.


¹⁷⁵ A JSON file is a JavaScript Object Notation (JSON) format file that stores data structures and objects.

¹⁷⁶ By "pseudo-token," I refer to the Vault NFT image StockX displays in the NFT tab of the user portfolio. This "pseudo-token" appears to serve as a visual representation of a user's ownership of a Vault NFT but is not the actual token. See *supra* Vault NFT Launch & Promotion; Thomas Depo. Tr. at 53:4-55:2.

StockX Vault NFT Nike Dunk Low Retro White Black - US M 10

A StockX token representing ownership of a physical pair.

NFT StockX Verified Edition of 100



Place Bid Buy for \$190

Sell for \$155 or Ask for More

Last Sale:
\$151
▼ -\$98 (-39%)

View Asks View Bids View Sales

All Sales

The data below is global and does not include applicable fees calculated at checkout.

Date	Time	Sale Price
Feb 17, 2023	3:06 AM	\$151
Dec 13, 2022	9:15 PM	\$249
Dec 4, 2022	1:52 PM	\$239
Oct 17, 2022	4:46 PM	\$184

177

¹⁷⁷ <https://stockx.com/retro-black-and-white-dunk-vault-nft>. For demonstrative purposes, this image was compiled as a composite image. Please refer to the link or document name to view the original.

¹⁷⁸ STX0163937, Page 43.



179

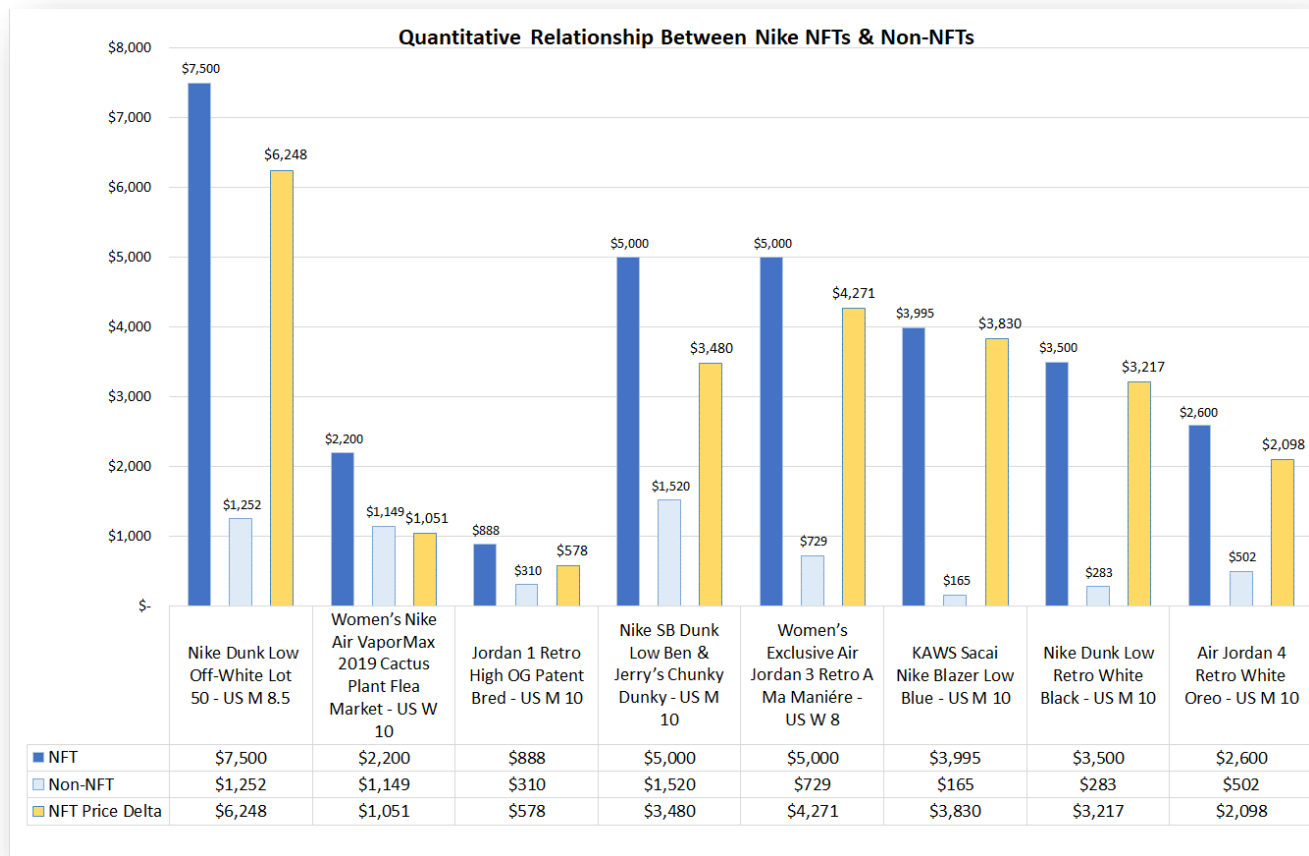


Deviation from Market Pricing of Corresponding Physical Goods

We performed a comparative price analysis to see if the Nike Vault NFTs traded at the same price as the associated non-NFT physical shoes on the StockX marketplace. If no additional value or perceived product or service were associated with the Vault NFT beyond the claim to the physical product, then one would expect the Nike Vault NFTs to sell at similar prices to the associated physical non-NFT shoes.

¹⁷⁹ *Id.*

¹⁸⁰ STX0057845 at *passim*.



181

The actual pricing was quite the opposite, as shown above. The key takeaway from this chart is the NFT Price Delta (yellow bars). The Price Delta dollar amounts are the difference in sale price of a Vault NFT compared to that of its associated non-NFT physical shoe. The time range of this chart is from January 18, 2022 (date of the first Vault NFT launch) to February 2, 2022 (day prior to Nike filing its complaint). These numbers represent the highest sale during that period. The data for the Vault NFTs was sourced from the internal pricing document STX0056686.¹⁸² StockX provides limited sales data on its website, so the price data for the non-NFT versions was sourced from the physical shoe PDP pages within the “Price History.” All eight (8) Nike Vault NFTs had an identical non-NFT physical shoe offering on the StockX marketplace. In each instance, the price paid for the Vault NFT was materially higher than the price paid for the associated physical pair of shoes. The premium varied between 90% and 2300%.¹⁸³

This notable price differential was discussed internally at StockX. As detailed above, Stock employees described the “customer problem” that they associated with the “inflated pricing” in the “White Paper: Trading Mechanic

¹⁸¹ StockX pricing data only displays the most recent fifty (50) sales for a product. This data was sourced by going to each StockX non-NFT version’s product page and referencing the “price history” chart at the bottom. The highest sale for the physical shoes was recorded based on the period (January 18 - February 2, 2022).

¹⁸² STX0056686, Excel tab, _Orders_Data_Download_data.

¹⁸³ The price premium was determined by the following equation: (NFT Price delta) / Original Number (Non-NFT) * 100.

Stimulation Tactics” document.¹⁸⁴ Prior to that, StockX employees noted the pricing differential almost immediately after the Vault NFT launch. Specifically, in an internal StockX Slack thread, roughly thirty minutes after the Vault NFTs had launched, StockX employee Carl Zhou asked, “why is the nft 5x the price of the actual shoe?” to which Truman Sacks responded, “Cuz its the NFTTTT...double value, digital / phygital.”¹⁸⁵ Minutes later in the same thread, Shervin Moghaddam, referring to the “Nike SB Dunk Low Ben & Jerry's Chunky Dunky (Vault NFT),” shared that “someone is trying to buy the chunky dunky for \$15K.”¹⁸⁶ Seconds later, Mr. Zhou clarified that Mr. Moghaddam had quoted a recent bid—the price a StockX user had indicated they would pay—for the “*chunky dunky *NFT*” (emphasis added) and shared that the current bid for that Vault NFT had increased to \$38,888.00.¹⁸⁷ In a telling pair of responses, Mr. Moghaddam wrote “WTAF” and “I’m going to buy a pair of chunky dunkys, drive them to Portland and make \$37k profit.”¹⁸⁸

Based on the above price analysis and StockX’s internal reporting and discussion, StockX customers and StockX employees clearly perceived the Vault NFT as independent and distinct from the underlying physical item.

StockX’s Vault NFTs Were Shoddily Designed and Implemented

StockX Delayed and Discouraged Vault NFT Redemption by Design

Despite StockX’s contention that the Vault NFTs were intended to be “claim tickets” for physical items, StockX did not begin to allow Vault NFT holders to redeem their NFTs for the associated physical item until March 1, 2022, approximately six weeks after launch.¹⁸⁹ Until then, Vault NFT holders were unable to redeem their Vault NFT for the associated physical item, *i.e.*, use it as a “claim ticket.” Even after redemption became available, as the StockX website FAQs state, a Vault NFT holder can expect to receive the physical item for which they had redeemed their Vault NFT in “45 days or less.”¹⁹⁰ It is unclear why StockX would need six weeks to ship an item it supposedly already holds in its “vault.”

StockX offered the Vault NFTs for sale *before* it had acquired all of the associated physical items.¹⁹¹ For example, on January 31, 2022, StockX Supply Chain Analyst, Kendall Graves, sent an email with the subject “NFT/ Inventory Vault Status Update 1/31” that includes a section about the status of the physical inventory acquisition of the Nike shoes associated with the “Jordan 1 Retro High OG Patent Bred (Vault NFT),” the Vault NFT released five days earlier on January 26, 2022.¹⁹² The chart indicates that while StockX had purchased a sufficient quantity of physical shoes for the 250-edition “Jordan 1 Retro High OG Patent Bred (Vault NFT)” offering, it had received only roughly half of the physical shoes and even fewer had been entered into the Vault:

¹⁸⁴ See *supra* Editions and Scarcity.

¹⁸⁵ STX0013215, Page 22.

¹⁸⁶ *Id.* at Page 23.

¹⁸⁷ *Id.*

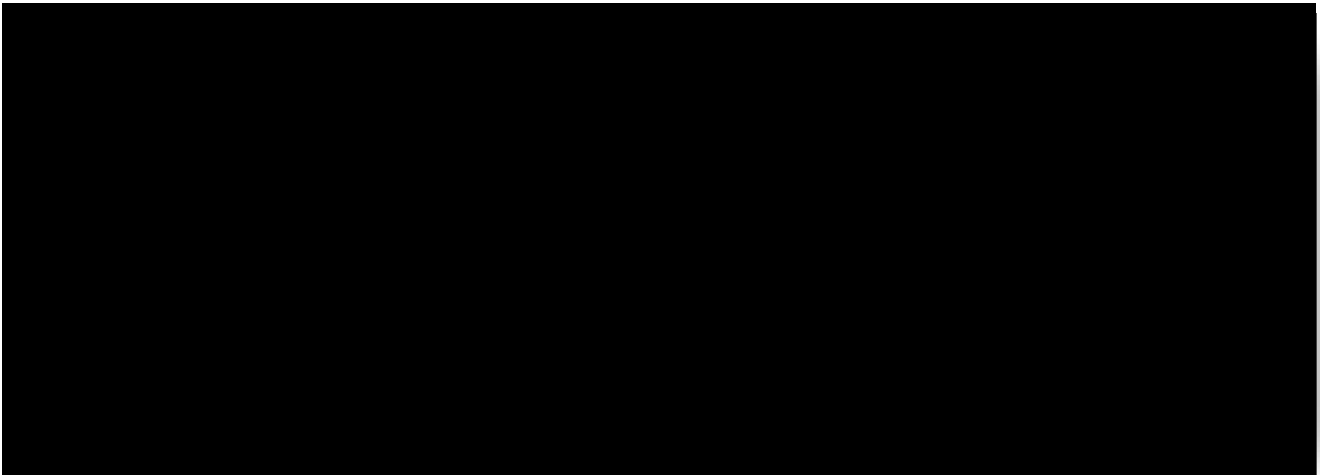
¹⁸⁸ *Id.* at Page 24.

¹⁸⁹ STX0163937, Page 2.

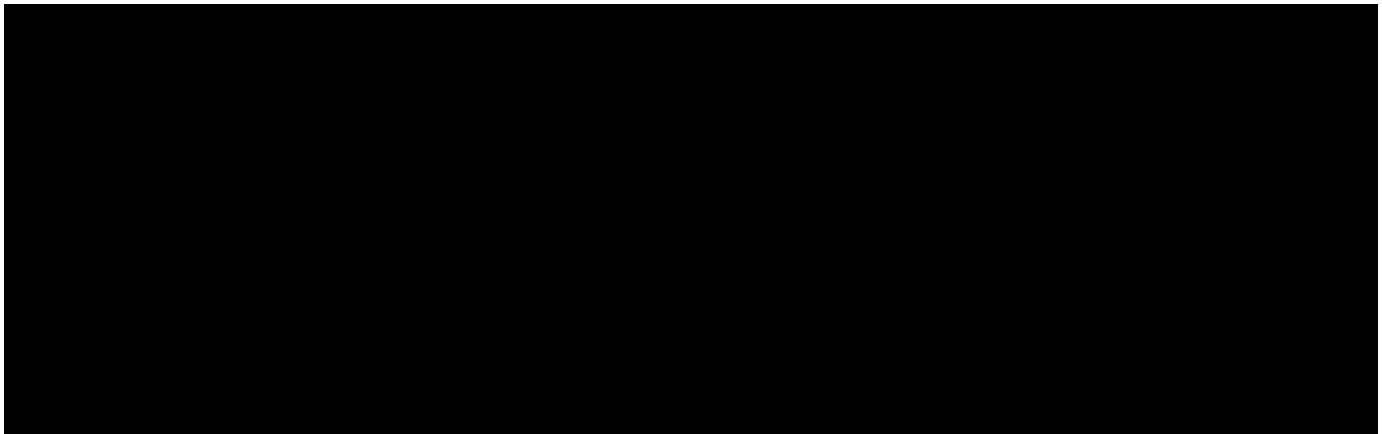
¹⁹⁰ How do I withdraw my item from the Vault?, StockX, <https://stockx.com/help/articles/How-do-I-withdraw-my-item-from-the-Vault> (last updated Apr. 14, 2022).

¹⁹¹ Defendant StockX LLC’s Responses and Objections to Plaintiff Nike, Inc.’s First Set of Requests for Admission, at Page 9 (“StockX had purchased all sneakers prior to the release of the associated NFTs, but in some instances, the sneakers had not made it to the StockX Vault prior to the release of the associated NFTs.”).

¹⁹² STX0041927, Pages 1, 2.



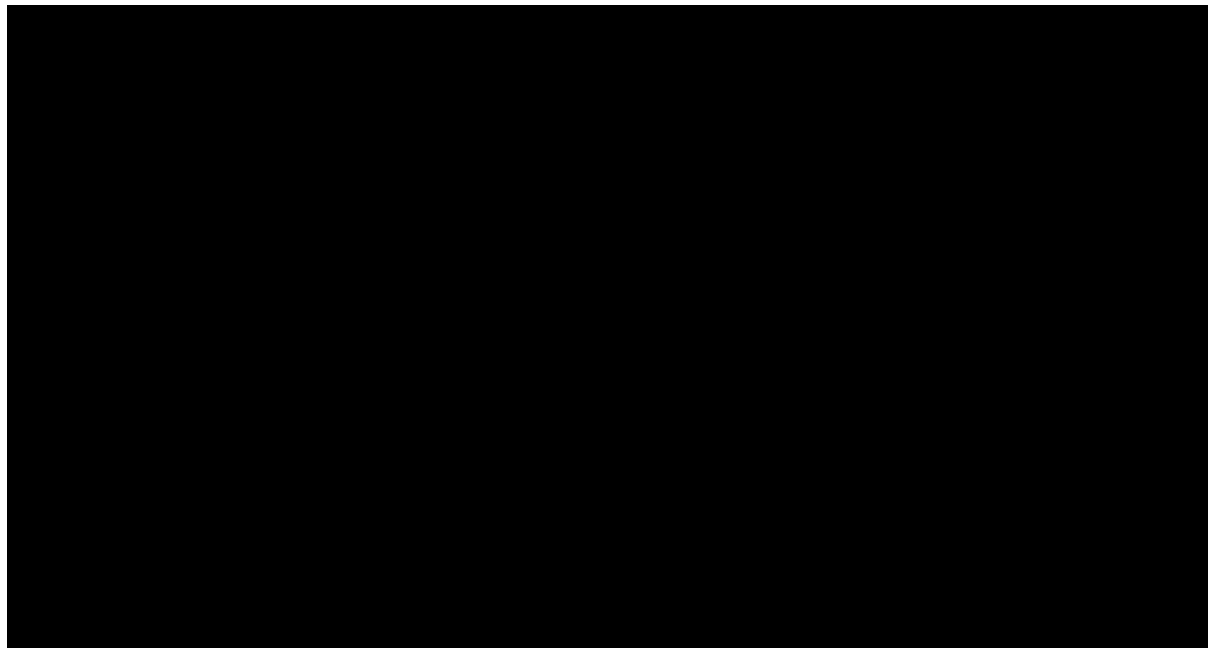
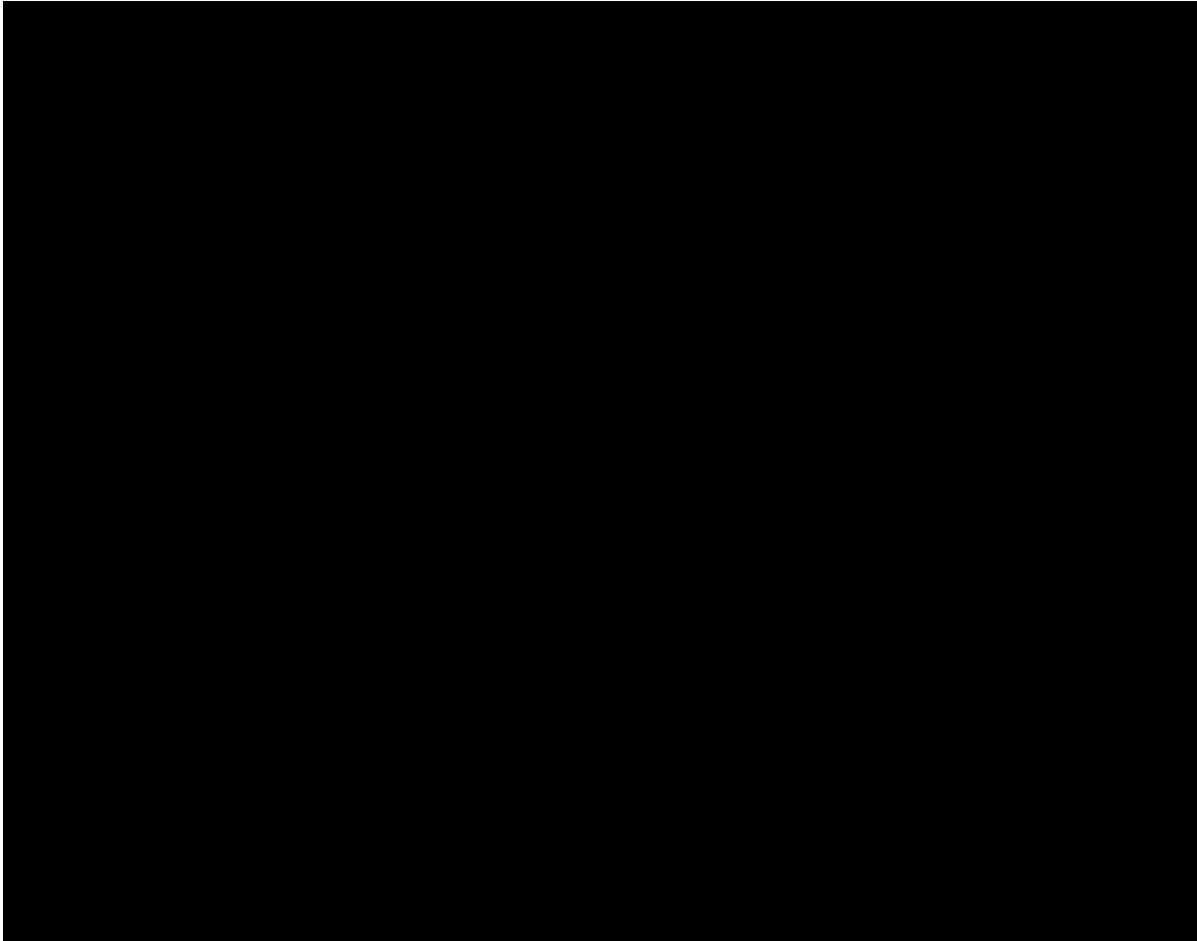
193



¹⁹³ Id.

¹⁹⁴ STX0163937, Page 43.

¹⁹⁵ STX0178690, Page 2.



196

¹⁹⁶ STX0537154, Pages 2, 3.



StockX Failed to Devote Sufficient Time and Resources to Deliver What It Promised to Consumers

For the Vault NFT planning, design, development, and architecture, StockX utilized the Minimum Viable Product (“MVP”) methodology. At its core, MVP product development focuses on delivering a product to market with just enough features to satisfy the needs of an early customer base. MVP was the primary focus throughout the product development and launch of the Vault NFTs. For example, the second slide of a slide deck titled “StockX Trading – Wave 2,” features a recap of the Vault NFT launch and identifies the sole “strategy” employed as “NFT MVP Experience.”¹⁹⁷ Internal documents also indicate that StockX selected an accelerated launch date to work toward as a goal rather than deciding when to launch upon building a quality product.¹⁹⁸ On December 16, 2021, roughly one month before launch of the Vault NFTs, StockX Chief Product Officer Stephen Winn emailed members of the Vault NFT team stating his concerns about this strategy: “Concern #1: We are planning to launch an extremely MVP experience and we have no plans to iterate on it until we launch a sustainable platform in 6 months.”¹⁹⁹ One week earlier, on December 9, 2021, Shervin Moghaddam expressed a similar sentiment in a Slack thread in even blunter terms, highlighting the tension between getting to market quickly and delivering a quality product, as well as StockX’s desire to sell out the first Vault NFT drops and the practical/technical constraints StockX faced in bringing the Vault NFTs to market:

¹⁹⁷ STX0022204, Page 2.

¹⁹⁸ STX0581522, Page 2.

¹⁹⁹ STX0112956, Page 2.

SM Shervin Moghaddam 12/9/2021, 1:32 PM
FYI - Scott and Greg want to use the exec call today to discuss launch and timing

SM Shervin Moghaddam 12/9/2021, 1:33 PM
I've been sharing the team concerns that we're not ready to deliver something of quality for Jan 10th

SM Shervin Moghaddam 12/9/2021, 1:33 PM
Scott wants to launch something crappy and build from there

SM Shervin Moghaddam 12/9/2021, 1:33 PM
I think the team feels we are going too far with that approach but I can't be the only one to say it

SM Shervin Moghaddam 12/9/2021, 1:33 PM
We need to explain the pros and cons of that approach

SM Shervin Moghaddam 12/9/2021, 1:35 PM
Some of it comes down to tech debt and process debt. We will be using humans in every team from marketing, CS, accounting, product, eng etc to make up for the fact that we don't have stuff automated. That means we will be slower to iterate and improve

SM Shervin Moghaddam 12/9/2021, 1:35 PM
Some of it is concerns about not being able to sell out the first few and the problem that creates for future drops

200

At his deposition, Evan Thomas similarly described StockX's MVP approach to the Vault NFTs:

The customer experience is adequate and viable to test the market and what their consumer needs are, but the amount of technology and process and architecture built into it is tried to be minimized. So it's a balancing act of the lowest amount of scope or effort to achieve the greatest return on investment for that scope and effort.

From a product management standpoint, it's beneficial to deliver MVP experiences quickly to be able to learn from them and iterate on them to make adjustments rather than bite off too much without getting anything in front of customers.²⁰¹

Mr. Thomas also indicated that StockX's MVP approach to the Vault NFT was a reason why they did not offer a "vault" option at checkout, as discussed above:

There was – I understand there to be a significant – additional technical effort that would have been required to build the systems and capabilities that would have allowed us to leverage the existing product detail pages in our catalog in

²⁰⁰ STX0013876, Page 2.

²⁰¹ Thomas Depo. Tr. at 34:2-8; 73:11-19.

that way that we didn't want to spend all of that time and resource without knowing if the market would respond in a positive way.²⁰²

At his deposition, StockX Technical Program Manager for the Vault NFTs, Aaron Salo, testified that StockX allocated only two full-time and four temporary "loaner" engineers to the Vault NFT team.²⁰³ Mr. Salo also testified that having a team of only two permanent engineers was not "sustainable."²⁰⁴

The StockX team focused on delivering these products to market despite known issues and negative effects on the customer's experience, of which there were many. On January 20, 2022, just after launch, StockX Vice President of Product, Tim O'Malley, emailed members of the Vault NFT team to push forward despite bugs: "Lastly, and this part is super important: we hit on something here and I don't want to wait quarters for the 'real solves.' This group knows that I'm content to wait for the real solves in most cases, but we're in scrappy startup mode on NFTs and we seem to have lightning in a bottle on the first iteration."²⁰⁵

By early 2022, the NFT market had peaked in sales, pricing, and trading volume. To take advantage of this demand and interest, StockX believed that bringing the Vault NFTs to market during this period was critical. As Jacob Fenton testified at deposition: "I mean, back in Q4 of 2021, the fervor around NFTs was palpable and we saw it as an opportunity that we wanted to, you know, better understand if there was opportunities for our business there, and so we wanted to move quickly to test that out."²⁰⁶ StockX's "rush-to-market" approach to the Vault NFTs is also well documented in their internal documents and communications. The "StockX Trading – Wave 2" slide deck identifies a single objective for the Vault NFTs: "Enter Market Quickly."²⁰⁷

StockX was also aware of the consequences of its hasty market entry. In a January 31, 2022 email to StockX CEO Scott Cutler, Stephen Winn summarized StockX's self-imposed MVP approach and time constraints, and some of the consequences of that approach:

- We set out to deliver an MVP in a little over 90 days, and we delivered it.
- We took risks, cut features, and "did things that don't scale" because we valued getting an NFT to a customer above all else.
- We've learned a ton. Incredibly, we immediately hit the upper limits of our solution. Despite all the blemishes in our MVP experience, customers are fighting through and editions are selling out quickly.
- Importantly, customers should not have to fight to trade. Our MVP must be iterated & improved to deliver an acceptable customer experience.

208

As Mr. Winn described, StockX's rush to market inevitably led to issues during and after the first two product launches. The focus on MVP rather than a product that was mature from a planning, development, and support standpoint are some of the factors that led to an underwhelming and frustrating experience for consumers.

²⁰² Id. at 40:6-13.

²⁰³ Salo Depo. Tr. at 210:25-213:3.

²⁰⁴ Id. at 212:24-213:3.

²⁰⁵ STX0039302, Page 1.

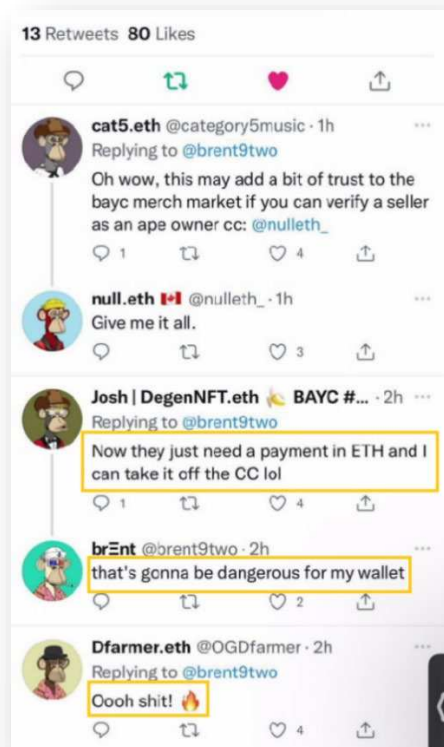
²⁰⁶ Fenton Depo. Tr. at 40 :2-6.

²⁰⁷ STX0022204, Page 2.

²⁰⁸ STX0052654, Page 2.

StockX Employees Traded at Inflated Prices and Openly Discussed Market Manipulation

Leading up to the first drop, StockX employees discussed in a Slack thread the trading and selling of NFTs from other collections not related to StockX (*i.e.*, The Humanoids, Cryptopunks, etc.) and the profits gained from “flipping” or selling.²⁰⁹ These employees used commonly known NFT purchasing terms such as “flipping,” “HODLing,” “diamond handing,” etc., and were very familiar with and kept abreast of emerging trends and topics in the NFT space, such as “play-to-earn” blockchain gaming, other high profile NFT projects, and NFT influencers.²¹⁰ In the same thread, StockX employees also discussed a Twitter thread that contained comments from prominent NFT collectors about the Vault NFTs, with StockX Knowledge Manager, Dominick Giachetti, writing “On that post there’s haters <@Abdul Alkozai> but on another post, with a lot of BAYC holders, there was a lot of support.”²¹¹ Sharing posts from NFT influencers like DFarmer²¹² exemplifies knowledge of the NFT space and the weight that these individuals carry when mentioning or commenting on an NFT project.



213

Numerous StockX employees engaged in purchasing the first Vault NFT drop on January 18, 2022. A price discussion ensued where employees expressed excitement about the prices at which the Vault NFTs were trading and selling. In a Slack thread, on launch day StockX Internal Communications Specialist, Cara Zimmerman, reflected on the purchase and market prices of two Vault NFTs and the enthusiasm from the current “market value” of these Vault NFTs at the time, stating, “look at that gain/loss column wowwww.”

²⁰⁹ STX0013215, *passim*.

²¹⁰ *Id.* at *passim*.

²¹¹ *Id.* at Pages 11-12.

²¹² <https://twitter.com/OGDfarmer>.

²¹³ STX0013215, Page 12 ; <https://mobile.twitter.com/brent9two/status/1482015967731326977>.

StockX employee Truman Sacks responded: “sell cara sell.”²¹⁴ This form of discourse surrounding the buying and selling and trading of NFTs is prominent in NFT collection Discord servers and Twitter.

During the January 18 release, StockX employees continued to discuss their “sell points” or the price at which they would list their Vault NFTs for sale. In the same Slack thread, on January 18, StockX Quality Assurance Specialist, Zohar Balter, offered “ill do 8000 private sale lmk,” to which Ms. Zimmerman replied, “ill sell my kaws for 10K.”²¹⁵ In addition to the fact that these prices materially departed from those of the associated physical product, StockX employees appeared to discuss manipulating the market for Vault NFTs, including by bidding up the price. Later that day in the same thread, StockX employee Truman Sacks suggested, “has there been thought around pumping in liquidity from a marketing budget pov.”²¹⁶ Shervin Moghaddam queried, “what’s the idea?”²¹⁷ In response, Mr. Sacks sated “just putting a bunch of bids . . . to drive more sales and get flywheel going.”²¹⁸ An NFT collection can gain price momentum through trading volume, which has several factors, including the number of bids (a buyer’s listed price to purchase an NFT) and prior sales (price history).

Based on the factors listed above, StockX employees appeared directly involved in driving demand for the sales of the Vault NFTs. Additionally, at least three StockX employees listed on StockX’s Rule 26 disclosures testified during their depositions that they had purchased and traded for profit at least one Nike-branded Vault NFT.²¹⁹

The Vault NFTs Were Riddled with Bugs and Errors that Marred the First Two Nike-Dominated Drops

Seven out of the eight Nike-branded Vault NFTs were released on January 18, 2022. The eighth Nike Vault NFT was released the following week on January 26, 2022. During both drops, there were several reported technical issues and errors, primarily affecting StockX’s order management and payment systems. These issues also affected other aspects of the StockX user interface (UI) functionality, such as the “View Asks” feature, which allows users to gauge current demand and offered secondary market prices for the Vault NFTs.²²⁰

Almost immediately upon the January 18 launch, StockX’s order management system was overwhelmed by Vault NFT orders, resulting in hundreds of “stuck” orders left in a state of incompleteness such that users (for an unspecified amount of time) were unable to list their NFTs for sale, know whether their bids had been received, or know whether a Vault NFT was actually available for sale or had already been sold.²²¹ Aaron Salo noted that “stuck” bids were “showing as Pending in the portfolio of customers,” and “many customers think their purchase is still pending.”²²² As Mr. Salo explained during his deposition, “stuck” or “broken” orders occur “during high-volume trading when a large number of people try to buy the same thing at the same time.”²²³ Mr. Salo also confirmed during his deposition that the fragility of StockX’s order management system was well-known within StockX for at least months prior to the Vault NFT launch, and that StockX made insufficient effort

²¹⁴ Id. at Page 19.

²¹⁵ Id. at Page 21.

²¹⁶ Id. at Page 24.

²¹⁷ Id.

²¹⁸ Id.

²¹⁹ Thomas Depo. Tr. at 63:16-71:4; Malik Depo. Tr. at 102:2-105:19; Moghaddam Depo. Tr. at 27:19-30:18.

²²⁰ STX0443343, Pages 116-117; 135-136.

²²¹ Id. at *passim*; see also STX0581522, Page 2 (“Problems on launch day meant we weren’t able to clear all our inventory and slowed down trading – Sellers who had a failed transaction weren’t able to list Asks – Buyers whose payments declined may believe they bought NFTs, as orders are still in a pending state – Push Notifications not sent and secondary trading affected.”).

²²² STX0443343, Page 123.

²²³ Salo Depo. Tr., at 222:6-223:7.

to remedy these issues despite expecting a large volume of Vault NFT orders that would likely overwhelm the system and lead to failed transactions as did in fact occur.²²⁴

During the January 18 launch, the StockX platform also experienced issues related to payment failures for users who tried using PayPal as the payment method for Vault NFTs. StockX had not implemented PayPal as a payment processor for Vault NFTs, but the Vault NFT checkout webpages nevertheless appeared to allow PayPal as a payment option, which then did not work and resulted in an error that prevented transfer of the NFT. These failed transactions caused purchasers who had the misfortune of paying for their Vault NFT with PayPal to believe that their payments had gone through for some period of time before StockX informed these unlucky consumers that the sales had failed, and they were not the owner of a Vault NFT, which had since increased substantially in price and were only available on the secondary market for inflated pricing.²²⁵

Due to at least the PayPal and “stuck” order issues, StockX internally reported that over two-thirds of the Vault NFT transfers did not transfer immediately as intended.²²⁶ As a result, some of the inventory was not sold during the January 18 launch, and StockX had to “relist the remaining inventory in a graceful way so as not to upend the marketplace.”²²⁷ Per a Vault NFT order spreadsheet produced by StockX, the following day, January 19, 2022 StockX sold in the first instance 146 of the initial 308 Vault NFTs at prices far in excess of the prices at which they were offered at launch.²²⁸ For example, of the three available editions of the “Nike SB Dunk Low Ben & Jerry’s Chunky Dunky – US M 10 (Vault NFT),” two were sold by StockX on January 18, 2022—within the first two minutes of launch—for the listed price of \$1,250.00, while the third was sold by StockX the following afternoon on January 19, 2022, for \$3,000.00.²²⁹ Of the three available editions of the “Women’s Nike Air VaporMax 2019 Cactus Plant Flea Market (Vault NFT),” two were sold by StockX on January 18, 2022 for the listed \$600.00, while the third was sold by StockX the following day for \$2,050.00.²³⁰ More numerous editions of Vault NFTs were also sold the following day by StockX for inflated prices; for example, 49 of the 100 editions of the “Air Jordan 4 Retro White Oreo (Vault NFT)” were sold beginning the evening of January 18, 2022 and into the following day for prices between \$500.00 and \$1,700.00 per NFT.²³¹ They had originally retailed for \$400.00.²³²

Technical issues and errors continued to occur during StockX’s second drop of Nike-branded Vault NFTs. Within minutes of the January 26, 2022 release of the “Jordan 1 Retro High OG Patent Bred (Vault NFT),” StockX employees flagged more failed transactions and new bugs related to StockX account verification.²³³ In another Slack thread, Evan Thomas confirmed that StockX’s order management system was once again overwhelmed and explained that “essentially what happened is our backend could not handle the volume of concurrent transactions placed within a 45 – 90 second window.”²³⁴ Mr. Salo provided additional detail in another Slack thread:

²²⁴ Id. at 110:16-121:25; 222:6-223:21; STX0443343, Pages 158-161.

²²⁵ STX0443343, Pages 123-126; *see also* STX0056686.

²²⁶ STX0057765, Page 2.

²²⁷ STX0052454, Page 2.

²²⁸ STX0056686, Excel tab, _Orders_Data_Download_data.

²²⁹ Id.

²³⁰ Id.

²³¹ Id.

²³² Id.

²³³ STX0443343, Pages 171-185; STX0082646, Page 15.

²³⁴ STX0014280, Page 5.

AS Aaron Salo 1/27/2022, 9:49 AM

I want to be careful about the public explanation as Evan has asked people who interface with the public to limit what they say, so maybe we can sync up with him on the official story?

What happened is pretty simple, we got overwhelmed with demand and a key internal system specific to NFT workflow (part of our brand new stuff) couldn't keep up with the pace. We massively expanded that system's capacity yesterday morning, which kept the rest of the day on solid ground and gives a very safe margin in future.

We determined of the 250 units we meant to sell yesterday

- 191 were perfect from the Buyer's perspective
- 41 cases where Buyer got the NFT but the order cancelled and we (probably) gave them a refund
 - need to sort these today, Eddie is on point
 - need to change the order state so the items appear in customer Portfolios
 - these customers get to keep the NFTs
 - we may or may not try again to charge the money (biz decision)
- 18 cases where we still own the NFT
 - we'll sell them in coming days

235

Mr. Salo also noted that during the January 26, 2022 Vault NFT release, StockX processed 3,419 payments for NFT orders, but only processed 330 actual orders, resulting in nearly 3,100 order cancellations.²³⁶

In response to all of the problems attendant to the “Jordan 1 Retro High OG Patent Bred (Vault NFT)” release, within an hour of the drop, StockX Director of Digital Strategy, Yasmin Tekyi-Mensah, wrote on the same Slack thread: “We’re getting slammed on social. Would we consider making a statement, at least in Discord, acknowledging things?”²³⁷ In another Slack thread, Ms. Tekyi-Mensah shared additional details about the social media response to the issues consumers experienced during the “Jordan 1 Retro High OG Patent Bred (Vault NFT)” release, noting that the issues caused “a lot of negativity, mostly: - payments declining – speculation that we allowed bots/allowed backdooring – ‘horrible drop.’”²³⁸

As StockX did with the Vault NFT transactions that failed on January 18, 2022, StockX relisted the “Jordan 1 Retro High OG Patent Bred (Vault NFT)s” that did not sell due to failed transactions at a later time at then-prevailing secondary market pricing, including at over double the initial \$300.00 retail price.²³⁹ Following the sell-off, StockX Director of Data and Analytics, Steven Blaha, shared on Slack a chart of recent Vault NFT sales, including those of the “Jordan 1 Retro High OG Patent Bred (Vault NFT),” and noted that the prices for the “Jordan 1 Retro High OG Patent Bred (Vault NFT)” “did not really recover” and suggested that “other sellers are bailing because of the mini crash.”²⁴⁰

Internal StockX Slack and email communications document additional technical issues that affected the Vault NFT drops and overall consumer experience, including those that affected the display of critical transaction and ownership information,²⁴¹ overcharging 161 sellers of the “Jordan 1 Retro High OG Patent Bred (Vault NFT)” double the ordinary transaction fee,²⁴² general mobile application and website user functionality and

²³⁵ STX0069341, Page 3.

²³⁶ Id.

²³⁷ STX0443343, Page 174.

²³⁸ STX0014280, Page 5.

²³⁹ STX0056686, Excel tab, _Orders_Data_Download_data.

²⁴⁰ STX0443343, Page 186.

²⁴¹ STX0082646, Pages 10-15.

²⁴² STX0039802, Page 2.

experience.²⁴³ The above are just some examples of the shoddiness of the Vault NFTs and poor consumer experience that stemmed therefrom.

StockX's Underlying Blockchain-Based NFTs Appeared Wholly Unnecessary and Indeed Pretextual to the Vaulting Product

NFTs are not necessary to StockX's vault trading business. A primary benefit of NFTs in this context could be the ability to connect a digital asset to a physical asset and record the connection on a secure blockchain, as touted by StockX, but Vault NFTs lack this functionality. As described above, StockX is using a separate system to maintain the linkage, outside of the Vault NFTs as they exist on the Ethereum blockchain. Indeed, as discussed below, businesses that offer vaulting as a service have successfully been deployed without using NFTs.

According to StockX, a main reason for using NFTs is efficiency: “StockX lawfully uses NFTs to allow users to more efficiently transact in authentic goods.”²⁴⁴ Then StockX goes on to describe the Vault process, which is the option for buyers to leave the purchased item with StockX to store instead of shipping it to them. A Vault option may be more efficient for buyers that are purchasing an item for investment purposes. However, nowhere in the description of the Vault process does StockX explain why NFTs are necessary. StockX could have run the Vault business without NFTs or blockchain. A digital receipt including the detail of the specific shoe, or a note in a user portfolio could be substituted and provide the same functionality as the “NFT”-based system StockX deployed. StockX also did not need to create an artistic rendering of a “card” with Nike branding and a picture of a Nike shoe for its “vaulted” goods service. Like checking your coat and receiving a physical claim ticket, a simple written description of the “vaulted” good would suffice.

[REDACTED]
 [REDACTED]
 [REDACTED]

²⁴³ STX0082646 at *passim*; STX0443343 at *passim*.

²⁴⁴ StockX Answer to First Amended Complaint (ECF No. 41), Page 4.

²⁴⁵ STX0053450, Page 1.

²⁴⁶ Fenton Depo. Tr. at 123:22-124:11.

He also

testified that the StockX Vault NFT product had “failed.”²⁴⁸

²⁴⁹ StockX was therefore aware that its use of NFTs was purely cosmetic instead of functional and served as a marketing purpose rather than enhance or facilitate a vaulted goods trading model.

Conclusion

StockX’s decisions and actions in the development, marketing, and offering of the Vault NFTs created a perception that the Vault NFTs had additional value and benefits beyond a simple claim ticket for a physical product. StockX did this by employing an NFT strategy that mirrored what other widely-known projects in the NFT space were using at the time. This strategy included the use of new product imagery for the Vault NFTs, building a community on their Discord server with specific channels to discuss the Vault NFTs, creating a product roadmap which detailed exclusive benefits and utility for holders, and consistently advertising additional benefits beyond what a claim to a physical product would include. They generated hype and demand for the NFTs by using well-known consultants and artists to promote their offering, socializing their releases through the use of short video clips and imagery on social media, and artificially limiting the supply to create a perception of scarcity. While these tactics were enough to get the product to market and generate customer demand, the underlying technology was one riddled with flaws and issues, leaving many consumers with a sour taste about the StockX Vault NFTs. StockX promoted the use of blockchain and its benefits, and claimed one-to-one representation of products as selling points, but failed to meet its own representations and industry standards upon closer examination. Considering all these issues, the Vault NFTs appear wholly unnecessary and indeed pretextual to the StockX Vault product.

I reserve the right to supplement or amend the foregoing opinion if and as new information should become available.

Steven S. McNew

Steven S. McNew

²⁴⁷ Salo Depo. Tr. at 292:1-12.

²⁴⁸ Salo Depo. Tr. at 171:10-19.

²⁴⁹ STX0158243, Page 26.

Appendix A

Materials Considered

Nike Documents

NIKE0000052
NIKE0000055
NIKE0000130
NIKE0000253
NIKE0000391
NIKE0000445
NIKE0000451
NIKE0005663
NIKE0006015
NIKE0006124

StockX Documents

STX0001275	STX0040142	STX0138015
STX0013215	STX0040143	STX0139557
STX0013332	STX0041927	STX0158243
STX0013876	STX0043213	STX0163937
STX0014276	STX0046789	STX0178690
STX0014280	STX0052454	STX0283867
STX0018406	STX0052654	STX0365016
STX0018415	STX0053450	STX0443343
STX0019820	STX0055336	STX0443799
STX0022204	STX0056496	STX0443801
STX0022553	STX0056686	STX0443802
STX0022669	STX0057765	STX0443828
STX0022678	STX0060150	STX0443829
STX0026166	STX0063639	STX0445340
STX0030487	STX0069341	STX0453911
STX0031290	STX0080073	STX0537154
STX0039302	STX0082646	STX0545122
STX0039474	STX0094175	STX0581522
STX0039475	STX0104547	
STX0039802	STX0112956	

Deposition Transcripts

Transcript of Deposition of Evan Thomas (1-18-2023)

Transcript of Deposition of Shervin Moghaddam (12-6-2022)

Transcript of Deposition of Jacob Fenton (12-2-2022)

Transcript of Deposition of Aaron Salo (2-16-2023)

Transcript of Deposition of Yasir Malik (1-12-2023)

Other Sources Considered

<https://research.aimultiple.com/nft-blockchains/>
<https://nftnow.com/art/quantum-the-first-piece-of-nft-art-ever-created/>
<https://www.cryptokitties.co/catalogue>
<https://www.cryptokitties.co/>
<https://opensea.io/collection/boredapeyachtclub>
<https://boredapeyachtclub.com/#/terms> (source web archive)
<https://www.gemini.com/cryptopedia/what-is-bored-ape-yacht-club-nft-bored-apes>
<https://opensea.io/assets/ethereum/0xBC4CA0EdA7647A8aB7C2061c2E118A18a936f13D/1>
<https://www.azuki.com/garden>
<https://nftevening.com/azuki-nft-collection-announces-streetwear-collab-with-ambush/>
<https://www.azuki.com/license>
<https://www.azuki.com/gallery?id=5620>.
<https://www.theverge.com/23141561/nft-boom-token-mint-artists-collectors-auction>
<https://www.wsj.com/articles/beeples-nft-fetches-record-breaking-69-million-in-christies-sale-11615477732>
<https://www.artnews.com/art-news/news/nft-trading-volume-down-97-since-january-artnews-1234641141/>
<https://decrypt.co/86135/biggest-celebrity-nft-owners-bored-ape-yacht-club>
<https://variety.com/2022/film/news/reese-witherspoon-hello-sunshine-world-of-women-partner-nft-movies-tv-shows-live-events-1235185212/>
<https://cointelegraph.com/news/what-is-an-nft-whitelist-and-how-can-you-join-one>
<https://web.archive.org/web/20220322183814/https://twitter.com/GwynethPaltrow/status/1506339403622363140>
<https://bafybeieiy76iqfguxhiyyionuki7g6exufoyo43lf7ks6vqib3sts7rg4.ipfs.dweb.link/>
<https://web.archive.org/web/20220118181750/https://stockx.com/dunk-low-off-white-lot-50-vault-nft>
<https://www.coindesk.com/web3/2022/10/05/yuga-labs-unveils-bayc-community-council-to-help-shape-future-initiatives/>
<https://twitter.com/WhIsBe/status/1482201110454542340>
<https://twitter.com/beijingdou/status/1483506576761704459>
<https://twitter.com/stockx/status/1483137506392612869?cxt=HHwWioC52YftlJUpAAAA>

<https://web.archive.org/web/20220616190147/https://twitter.com/stockx>
<https://twitter.com/stockx/status/1483501803182374922?lang=en>
<https://twitter.com/stockx/status/1483501826754416641>
<https://twitter.com/stockx/status/1483501849328168966>
<https://twitter.com/stockx/status/1483501907805188111>
<https://twitter.com/stockx/status/1483501925987401736>
<https://twitter.com/stockx/status/1483501946145316868>
<https://twitter.com/stockx/status/1483501964252090374>
<https://stockx.com/terms>
<https://etherscan.io/nft/0x9212c3e33eafb390d0d215950bd8bea1fcc24324/4349659718886457300>
<https://etherscan.io/tx/0xeba27ac2c830aa8988d770d044cd5b68b0ff34920f825bc5eeae3089c8515e9b>
<https://stockx.com/aj11-retro-cool-grey-vault-nft>
<https://rarible.com/token/0x9212c3e33eafb390d0d215950bd8bea1fcc24324:2375790845939560400?tab=history>
<https://library.dedaub.com/contracts/Ethereum/0x9212C3E33eafb390D0d215950BD8bea1fCC24324/decompiled?line=1>
<https://etherscan.io/address/0x9212c3e33eafb390d0d215950bd8bea1fcc24324>
<https://stockx.com/kaws-bff-open-edition-vinyl-black>
<https://stockx.com/help/articles/What-are-the-rewards-and-benefits-of-owning-NFTs-on-StockX>
<https://stockx.com/about/stockx-launches-vault-nfts/>
<https://blockbar.com/brands>
<https://www.mlb.com/news/mlb-candy-offering-new-digital-collectibles-for-2023>
<https://www.gucci.com/us/en/stories/article/10ktf-gucci-grail>
<https://opensea.io/collection/10ktf-gucci-grail>
<https://stockx.com/dunk-low-off-white-lot-50-vault-nft>
<https://twitter.com/OGDfarmer>
<https://mobile.twitter.com/brent9two/status/1482015967731326977>

Appendix B

Steven S. McNew

Senior Managing Director

Global Practice Leader, Blockchain and Digital Assets

1301 McKinney, Suite 3500, Houston, TX 77002

+ 1 936 232 9994

Steve.McNew@fticonsulting.com

Certifications

Blockchain and
Cryptocurrency Executive
Education Certificate,
Massachusetts Institute of
Technology (MIT)

Certified Bitcoin Expert,
Blockchain Council (CBIE)

Certified Blockchain Expert,
Blockchain Council (CBE)

Certified Cryptocurrency
Investigator, CipherTrace

Certified Smart Contracts
Developer, Blockchain
Council

Certified NFT Expert,
Blockchain Council

Business Strategy, University
of Virginia

Advanced Business Strategy,
University of Virginia

Associations

CFAAR (Cryptocurrency
Fraud and Asset Recovery)

Blockchain Council

Digital Currency Council

Government Blockchain
Association

Texas Blockchain Council

Wallstreet Blockchain
Alliance

Steven S. McNew is an expert in digital currencies, blockchain, smart contracts, and NFT's. Mr. McNew has led hundreds of cryptocurrency and digital assets investigations and currently lead all cryptocurrency workstreams in some of the largest bankruptcies in the sector, including representation of the Unsecured Creditors Committee (UCC) in the FTX bankruptcy, representation of the Equity Committee in the Core Scientific bankruptcy, and having previously led all cryptocurrency workstreams in representation of the UCC in the Voyager bankruptcy. Mr. McNew routinely manages advisory, regulatory, and diligence engagements for businesses that are leveraging cryptocurrencies, NFTs, blockchains and other digit assets.

In addition to his work on digital assets and blockchain, Mr. McNew leads large scale engagements for clients in data governance and data privacy, has authored an enterprise search patent application and has led a myriad of engagements related to emerging technologies and digital forensics for thirty-five (35) years.

Mr. McNew has led projects involving the technological assessment of cryptocurrency exchanges, validating assets under custody (AUC) of potential acquisition targets, blockchain assessments, pilot projects, blockchain strategy and implementation as well as investigations into disputes involving various forms of cryptocurrencies. A few notable projects include:

- Leads all cryptocurrency workstreams related to FTI's representation of the Unsecured Creditors Committee in both the Voyager and FTX bankruptcies.
- Served as Technical Advisor, completed several complex technical assessments, and led financial due diligence in support of the BitGo acquisition by Galaxy Digital – a deal The Wall Street Journal headlined as the first potential \$1B+ deal in the crypto sector.
- Engaged by a global telecommunications company to architect and deploy a data governance and data privacy program for 3500 applications and 7000 structured databases to align to new requirements for the Department of Defense's Cybersecurity Maturity Model Certification (CMMC) and to the latest privacy regulations (GDPR, CCPA, HIPAA).
- Provided expert investigative services to counsel and their clients for investigation of alleged theft of Bitcoin, analysis of behavioral patterns of cryptocurrency movement to determine if the movement is consistent with known patterns of fraudulent behavior and develop various forensic reports.

Steven S. McNew, May, 2023

Testimony/Expert Witness

- Expert Rebuttal Report, May 5, 2023 – Dmitry Stakhin v. Poloniex, LLC, In Arbitration before American Arbitration Association, AAA Case No. 01-20-0015-7021.
- Expert Rebuttal Report, May 5, 2023 – Jinsuk Chung v. Poloniex, LLC, In Arbitration before American Arbitration Association, AAA Case No. 01-20-0002-6063.
- Expert Report, March 31, 2023 – Dmitry Stakhin v. Poloniex, LLC, In Arbitration before American Arbitration Association, AAA Case No. 01-20-0015-7021.
- Expert Report, March 31, 2023 – Jinsuk Chung v. Poloniex, LLC, In Arbitration before American Arbitration Association, AAA Case No. 01-20-0002-6063.
- Appear on February 7, 2023 - Hearing concerning Cash Management and Security Protocols – Voyager Digital Holding, Inc., et. al., United States Bankruptcy Court Southern District of New York, Chapter 11 Case No. 22-10943 (MEW).
- Declaration, February 6, 2023 – Voyager Digital Holding, Inc., et. al., United States Bankruptcy Court Southern District of New York, Chapter 11 Case No. 22-10943 (MEW).
- Supplemental Declaration of Steven S. McNew, January 19, 2023 – Huntsman International LLC and Huntsman Holland B.V. v. Dow Benelux N.V. and The Dow Chemical Company, Superior Court for the State of Delaware.
- Declaration, August 19, 2022 – Voyager Digital Holding, Inc., et. al., United States Bankruptcy Court Southern District of New York, Case No. 22-10943.
- Testimony, May 18, 2022 – Dr. Jonathan Vu v. Coinbase, Inc., In Arbitration before American Arbitration Association, AAA Case No. 01-21-0002-6541.
- Testimony, March 24, 2022 – Steven Cooper v. Coinbase, Inc., In Arbitration before American Arbitration Association, AAA Case No. 01-21-0002-4493.
- Supplemental Declaration of Steven S. McNew, March 1, 2022 – Huntsman International LLC and Huntsman Holland B.V. v. Dow Benelux N.V. and The Dow Chemical Company, Superior Court for the State of Delaware.
- Expert Report, February 28, 2022 - Jonathan Vu v. Coinbase, Inc., In Arbitration before American Arbitration Association, AAA Case No. 01-21-0002-6541.
- Expert Report, February 28, 2022 – Steven Cooper v. Coinbase, Inc., In Arbitration before American Arbitration Association, AAA Case No. 01-21-0002-4493.
- Expert Report, February 8, 2022 — James Kimmelman v. Wayne Insurance Group, Case No. 18 CV 1041, Franklin County Court of Common Pleas, Ohio.
- Reply Declaration of Expert Steven S. McNew, February 2, 2022 – Balaji K. Srivansan v. Hashflow Foundation, Inc., ISO Application for TRO and OSC Regarding Preliminary Injunction, Superior Court of the State of California.
- Declaration of Steven S. McNew, February 2, 2022 – Huntsman International LLC and Huntsman Holland B.V. v. Dow Benelux N.V. and The Dow Chemical Company, Superior Court for the State of Delaware.
- Declaration of Expert Steven S. McNew, January 13, 2022 – Balaji K. Srivansan v. Hashflow Foundation, Inc., ISO Application for TRO and OSC Regarding Preliminary Injunction, Superior Court of the State of California.
- Expert Report, November 19, 2021 - Tong Hong (Joseph) Chung and Ors v. InvestbyBit Pty Ltd (ACN 621 652 579) trading as Binance Australia and Ors: Supreme Court of New South Wales Proceeding 2021/356877.
- Expert Report, February 26, 2021 - Alec Otto v. Nano f/k/a Railbocks f/k/a Hieusys LLC et al, Case No. 4:19-cv-00054-YGR, United States District Court, Northern District of California.

Testimony/Expert Witness (Continued)

Steven S. McNew, May, 2023

- Affidavit of Steven S. McNew, January 14, 2020 — James Kimmelman v. Wayne Insurance Group, Case no. 18 CV 1041, Franklin County Court of Common Pleas, Ohio.
- Deposition, October 21, 2019 — Temurian et al V. Piccolo et al, Case No. 0:18-cv-62737-RS, United States District Court for the Southern District of Florida, Fort Lauderdale Division.
- Deposition, October 7, 2019 — BitClave PTE. LTD., V. Vasily Trofimchuk; Pavel Trofimcuk; Astra, Inc. D/b/a Astra Studio; and Astra Studio, Ooo, Case No.18-CV-328574, Superior Court of the State of California for the County of Santa Clara.
- Expert Report, October 2, 2019 — Temurian et al V. Piccolo et al, Case No. 0:18-cv-62737-RS, United States District Court for the Southern District of Florida, Fort Lauderdale Division.
- Expert Report, August 22, 2019 — Fasulo et al v. Kravets et al, Case No. 1:19-cv-03741, United States District Court for the Southern District of New York.
- Expert Report, Regarding the Proper Characterization of Bitcoin for Purposes of Insurance Coverage, July 5, 2019 — James Kimmelman v. Wayne Insurance Group, Case No. 18 CV 1041, Franklin County Court of Common Pleas, Ohio.
- Expert Report, July 5, 2019 — James Kimmelman v. Wayne Insurance Group, Case No. 18 CV 1041, Franklin County Court of Common Pleas, Ohio.

Recent Publications

- How Blockchain Can Help Measure and Prove ESG Milestones,” Forbes, November 8, 2022
- “Cryptocurrency’s Extended Arrival: Three Areas Of Focus For Financial Services,” Forbes, February 17, 2022
- “US Federal Reserve Issues Report on Digital Dollar, Fed Cites Privacy, Cybersecurity Concerns Among Top CBDC Risks,” Information Security Media Group, January 21, 2022 (Quoted)
- “Cryptocurrency Fraud Soars, Spurring State Action,” PEW (Stateline), November 17, 2021 (Quoted)
- “Demystifying Blockchain-Supported Smart Contracts,” Pharmaceutical Online, November 15, 2021
- “Tracking Stolen Crypto is a Booming Business: How blockchain Sleuths Recover Digital Loot,” The Washington Post, September 22, 2021 (Quoted)
- “How to Strengthen Trade and Labor Compliance with Technology Amid Increasing Customs Enforcement,” Global Trade Magazine, September 15, 2021
- “Cryptocurrency and the Rise of SPACs: A Match Made in Investor Heaven?,” Forbes September 10, 2021
- “Technical Considerations Amid the Explosion of Crypto Acquisitions and Public Listings,” FTI Technology, June 21, 2021
- “Mergers and acquisitions are rising, leaving crypto assessments in question,” Cointelegraph, April 17, 2021, <https://cointelegraph.com/news/mergers-and-acquisitions-are-rising-leaving-crypto-assessments-in-question>
- “Four Types of Investigations Poised to Make a Comeback Post-Pandemic - And How Companies Can Compare,” Forbes Business Development Council, November 5, 2020, <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2020/11/05/four-types-of-investigations-poised-to-make-a-comeback-post-pandemic---and-how-companies-can-prepare/>
- “A 2020 and Post-Pandemic Outlook for Cryptocurrency and Blockchain Industries,” Forbes Business Development Council, May 21, 2020, <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2020/05/21/a-2020-and-post-pandemic-outlook-for-cryptocurrency-and-blockchain-industries/>
- “How Blockchain Can Solve Today’s Medical Supply Chain Flaws and Improve Responses for Future Crises,” Forbes Business Development Council, April 29, 2020, <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2020/04/29/how-blockchain-can-solve-todays-medical-supply-chain-flaws-and-improve-responses-for-future-crises/>

Steven S. McNew, May, 2023

- “15 Biz Dev Leaders Share Their Top Risk Management Tips,” Forbes Council Post, March 17, 2020, <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2020/03/17/15-biz-dev-leaders-share-their-top-risk-management-tips/#55e6fd745098>
- “Dark Matters: How Investigators Uncover Cryptocurrency Fraud and Terrorism Funding,” Forbes Business Development Council, February 7, 2020, <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2020/02/07/dark-matters-how-investigators-uncover-cryptocurrency-fraud-and-illicit-funding/>
- “INSIGHT: Crypto Advancements Stir Legal Work in Investigations, Asset Tracing, Bloomberg Law, December 17, 2019, <https://news.bloomberglaw.com/us-law-week/insight-crypto-advancements-stir-legal-work-in-investigations-asset-tracing>
- “Minimizing Privacy Risk With Data Minimization,” Corporate Counsel, September 2, 2019, <https://www.law.com/corpcounsel/2019/09/02/minimizing-privacy-risk-with-data-minimization/>
- “When Succession Planning Goes Awry, Cover Your Digital Assets,” Law Technology Today, August 19, 2019, <https://www.lawtechnologytoday.org/2019/08/cover-your-digital-assets/>
- “Information Governance: achieving data ethics, privacy and trust.” Ethical Boardroom. August 6, 2019, <https://ethicalboardroom.com/information-governance-achieving-data-ethics-privacy-and-trust/>
- “Blockchain Is Much More than Cryptocurrency,” Corporate Council Business Journal (CCBJ), July 11, 2019, <https://ccbjournal.com/articles/blockchain-is-much-more-than-cryptocurrency>
- “Opportunities for New Efficiencies and Revenue Models in Enterprise Blockchain,” CIO Review, June 10, 2019, <https://business-process-management.cioreview.com/cxoinsight/opportunities-for-new-efficiencies-and-revenue-models-in-enterprise-blockchain-nid-29076-cid-87.html>
- “How Blockchain Can Transform Preventative Care,” Managed Healthcare Executive, May 12, 2019, <https://www.managedhealthcareexecutive.com/article/how-blockchain-can-transform-preventative-care>
- “Practical Enterprise Blockchain: How to Apply and Adopt,” Information Week, April 30, 2019, <https://www.informationweek.com/strategic-cio/practical-enterprise-blockchain-how-to-apply-and-adopt/a/d-id/1334542>
- “How to start implementing blockchain for enterprise,” Tech HQ, April 26, 2019, <https://techhq.com/2019/04/how-to-start-implementing-blockchain-for-enterprise/>
- “Privacy & Regulatory Considerations in Enterprise Blockchain,” Dark Reading, April 3, 2019, <https://www.darkreading.com/risk/privacy-and-regulatory-considerations-in-enterprise-blockchain-/a/d-id/1334277>
- “The Next Big Hacking Target: Law Firms.” American Bar Association, Fall 2016, <https://www.americanbar.org/groups/litigation/committees/corporate-counsel/articles/2016/fall2016-the-next-big-hacking-target-law-firms/>
- Creating a Data Room Make Your Transactions Efficient and Cost-effective. The Metropolitan Corporate Counsel. 1996

Professional Presentations and Speaking Engagements

- Demystifying Blockchain - A Conversation with FTI's Blockchain Leader Steve McNew. November 20, 2020
- The Future of Investigations Part 4: X-Factors. November 5, 2020
- Smart Cities: Bridging the Gap with Blockchain Technology. January 21, 2020
- Blockchain Technology. January 8, 2020
- Fighting the Cyber War: Corporate Governance, People and Process Healthcare and Life Sciences. November 13, 2019

Steven S. McNew, May, 2023

- Blockchain and E-Discovery Series Part 2: Forensics - Getting in the Weeds from an Expert Perspective. October 27, 2019
- Blockchain and the Future. September 25, 2019
- Blockchain in Information Governance. September 19, 2019
- Blockchain, Cryptocurrency & Smart Contracts; Disputes & Investigations Best Practices. August 18, 2019
- Blockchain & Cryptocurrency: Corporate Opportunities and Regulatory Considerations. June 12, 2019
- An Introduction to Blockchain. May 2, 2019
- Privacy, Cybersecurity and Data Control Best Practices for the ABAC/Global Trade Executive; What You Need to Know As A Non-Privacy Expert Operating In Today's Global Business Environment. May 1, 2019
- Introduction to Blockchain: What Every Privacy and Security Professional Needs to Know. April 11, 2019
- Uses for Blockchain Technology - A Roundtable Discussion. April 2, 2019
- Transparency and Compliance: Blockchain Supported Regulatory Alignment. March 19, 2019

Awards & Recognition

- Who's Who Legal 2019: Experts - Digital & Data - Digital Forensic Experts 2019

Employment History

- November 2018 – Present: FTI Consulting – Technology Segment, Houston, TX, Senior Managing Director
- September 2017 – November 2018: Grant Thornton LLP, Houston TX, Managing Director
- December 2010 – August 2017: Navigant Consulting, Managing Director and Global Strategic Market Development Leader
- November 2009 – November 2010: Flex Discovery Solutions, President and Founder
- January 2009 – November 2009: Huron Consulting Group, Managing Director
- March 1998 – May 2008: LIT Group, Inc./RLS Legal Solutions/DigIT Technologies, President
- February 1996 – May 1998: IKON Document Services, General Manager
- 1994 – 1995: Quorum Litigation Services, General Manager
- 1987 – 1994: Arthur Andersen, Senior Manager